

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

New Reg No.: 201246276
Old Reg. No.: 201211973
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 8, 2012
County: Jackson

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in-person hearing was held on February 8, 2012. Claimant appeared with her authorized representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

ISSUE

Was good cause established for continuance of the hearing to obtain a one day's medical progress note?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On January 23, 2012, Notice of Hearing dated February 8, 2012 was mailed to Claimant/L&S Associates (L&S). This notice instructed Claimant/L&S that if they had any documents/written materials which you want the Administrative Law Judge to consider in this hearing, bring them to the hearing.
2. On February 1, 2012, Claimant had her last progress medical exam.
3. On February 8, 2012, at the hearing a medical packet consisting of 75 pages and Claimant Exhibit A consisting of 11 pages were made part of the hearing record.

4. On February 8, 2012 at the hearing, L&S requested a 30 day continuance of the hearing to obtain the February 1, 2012 medical exam progress note.

L&S stated the reason for the requested continuance was to establish an ongoing medical status in order to establish a stronger case that L&S offered no specific expected information in the progress note; and that 7 days was not enough time to obtain the progress note for the hearing.

The Administrative Law Judge not yet having analyzed the medical evidence of record advised both parties that after he reviewed the medical evidence of record he would notify both parties within 10 work days in writing if the continuance request should be granted.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Facts above are undisputed.

An adjournment or continuance may be granted by an Administrative Law Judge (ALJ) for good cause. Good cause includes the absence of material witness or relevant and necessary evidence. MAC R 400.915.

Good cause - mean a circumstance which is considered a valid reason for not complying with a requirement.
BPG, p. 19.

The Administrative Law Judge will follow the same rules used in circuit court to the extent these rules are practical in the case being heard. The ALJ must ensure that the record is complete, and may do the following:

- Take an active role in questioning witnesses and parties.
- Assist either side to be sure all the necessary information is presented on the record.
- Be more lenient than a circuit court judge in deciding what evidence may be presented.
- Refuse to accept evidence that the ALJ believes is:
 - Unduly repetitious
 - Immaterial

- Irrelevant
- Incompetent

Either party may:

- State on the record its disagreement with the ALJ's decision to exclude evidence and the reason for the disagreement; and
- Object to evidence the party believes should not be part of the hearing record.

When refusing to admit evidence, the ALJ must state on the record the nature of the evidence and why it was not admitted. The ALJ may allow written documents to be admitted in place of oral testimony if the ALJ decides this is fair to both sides in the case being heard.

Claimant/L&S had the burden of proof to establish good cause for the requested continuance of the hearing to obtain additional medical evidence.

On January 23, 2012, the DHS notified Claimant/L&S of upcoming hearing date of February 8, 2012.

On February 1, 2012, Claimant had her last medical progress exam. There was one week that Claimant/L&S would have obtained the progress report for the hearing. Claimant/L&S offered no evidence of record that they made a good faith effort to obtain the report during that period or that it was beyond their control to obtain the report.

Claimant/L&S had no evidence that the above mentioned report would be favorable or unfavorable for their case. It is the well settled law that fact-finders are not permitted to guess or speculate as to material facts in dispute. And it would only be a guess on the part of this ALJ whether the report would be necessary.

L&S misstates the facts in this case. L&S says the ALJ did not grant its requested continuance to obtain the medical progress report, but instead stated he would issue a written response to L&S request within 12 days. The evidence of record does not support this statement.

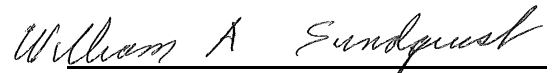
The evidence of record shows that the ALJ advised Claimant/L&S that after review of the medical reports of record he would notify both parties in writing within 10 work days if the requested continuance was granted.

L&S argued that the medical evidence was sufficient, but that L&S wanted the additional medical to strengthen Claimant's case; that she had not talked to the examining physician regarding the expected contents of the purpose progress note; and that 7 days was not enough time to have obtained the report for the hearing.

This ALJ does not find by the preponderance of the evidence of record that Claimant/L&S has established a reasonable effort was made in obtaining the progress examination note for the hearing nor that the information would be necessary medical evidence.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the original decision stands.



William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 12, 2013

Date Mailed: February 12, 2013

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
 - the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

201246276/WAS

WAS/tb

cc:

