

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201313557
Issue No.: 1006
Case No.: [REDACTED]
Hearing Date: April 18, 2013
County: Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on April 18, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant) and [REDACTED] (Claimant's friend). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department properly close Claimant's State Disability Assistance (SDA) case due to failure to Claimant's failure to cooperate in pursuing other potential benefits?

FINDINGS OF FACT

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

1. Claimant was active for Medicaid Disability (MA-P) and SDA at all relevant times.
2. On May 1, 2012, the Department mailed Claimant a Notice to Apply (DHS-1551), which notified Claimant that he must apply for SSI by May 11, 2012 and file an appeal if the application was denied. The DHS-1551 further indicates that "failure to do so will result in your case being closed."
3. On July 24, 2012, the Department received a copy of a July 11, 2012 Notice of Disapproved Claim mailed to Claimant.

4. On October 29, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's SDA case effective December 1, 2012 because he "failed to apply for or appeal SSI as directed. BEM 270."
5. On November 7, 2012, the Department received Claimant's request for a hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 400.3180.

With regard to SDA and MA, clients must apply for benefits for which they may be eligible. BEM 270. This includes taking action to make the entire benefit amount available to the group. BEM 270. Any action by the client or other group members to restrict the amount of the benefit made available to the group causes ineligibility. BEM 270. Refusal of a program group member to pursue a potential benefit results in group ineligibility. BEM 270.

RSDI benefits are payable to a wage earner and/or his/her dependents. BEM 270. The benefits are administered by the Social Security Administration (SSA). BEM 270. The wage earner must be covered by Social Security and must be: (1) retired and at least age 62; (2) disabled or blind; or (3) dead. BEM 270. RSDI are potential benefits for all of the following persons: (1) a person who is blind; (2) a person who is retired and at least age 62; (3) a person who claims illness or injury prevents him from working for at least 12 months; (4) a person whose spouse is retired, disabled or dead; or (5) a child whose parent is retired, disabled or dead. BEM 270.

SSI benefits are paid to persons who are aged (65 or older), blind or disabled. BEM 270. The following clients must be referred to SSA to apply for SSI: (1) persons age 65 or older; (2) person receiving or eligible for SDA and disability-related MA; (3) adults in a FIP group who are blind or who claim illness or injury prevents them from working for at least 12 months. However, the Department must not deny eligibility to an FIP applicant or recipient unless MRT has determined that person is potentially eligible for SSI; children who are blind or disabled. BEM 270.

In the instant matter, the Department maintains that Claimant had been approved by the Medical Review Team (MRT) for MA-P and SDA, but that he failed to apply for benefits with the Social Security Administration (SSA) and/or appeal an adverse SSA decision. The Department further indicated that Claimant was mailed a notice to apply for SSA benefits in May, 2012, but that Claimant failed to comply with the notice in a timely manner. The Department conceded that it did not mail Claimant a follow up notice in

July, 2012. However, the Department representative who attended this hearing indicated that Claimant was contacted via telephone and advised that he needed to apply for SSA benefits.

Claimant, on the other hand, maintains that he did not receive the notice to apply for benefits through the SSA in May, 2012. Claimant also indicated that the Department did not return his telephone calls during this time period.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge finds that the Department's position is more credible. In addition, the evidence in this matter is more persuasive in favor of the Department. This Administrative Law Judge further finds that the mailbox rule controls here.

Michigan adopts the mailbox rule which is a presumption under the common-law that letters have been received after being placed in the mail in the due course of business. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). In other words, the proper mailing and addressing of a letter creates a presumption of receipt but that presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Under the mailbox rule, evidence of business custom or usage is allowed to establish the fact of mailing without further testimony by an employee of compliance with the custom. *Good, supra*. Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. *Good supra* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276. The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *id*.

In the instant matter, Claimant has failed to overcome the presumption of receipt of the DHS-1551 Notice to Apply. The notice clearly indicated that Claimant needed to apply for SSA benefits by May 11, 2012. The notice also requires Claimant to inform his specialist of all SSI decisions regarding his SSI application, appeals or SSI hearing decision. Here, the evidence shows that Claimant did not appeal the adverse decision from the SSA.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department properly closed Claimant's MA-P and SDA case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 19, 2013

Date Mailed: April 22, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

2012-13557/CAP

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

CAP/aca

cc:

