

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

IN THE MATTER OF:



Reg. No.: 14-011577-RECON
14-011577
Issue No.: 4001
Case No.: [REDACTED]
Hearing Date: December 4, 2014
County: Ionia

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Appellant's Authorized Hearing Representative's (AHR) Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on December 4, 2014, and mailed on December 8, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on January 23, 2015.

ISSUE

Whether the ALJ erred in affirming the Department of Health and Human Services' (Department's) decision to close Claimant's case for State Disability Assistance (SDA) based on failure to pursue a potential resource.

FINDINGS OF FACT

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

1. The Findings of Fact Numbers 1 through 5 under Registration Number 14-011577 are incorporated by reference.

2. On December 4, 2014, a hearing was held resulting in a Hearing Decision mailed on December 8, 2014.
3. On December 17, 2014, the Michigan Administrative Hearing System (MAHS) received the Claimant's Request for Rehearing/Reconsideration.
4. On January 23, 2015, the MAHS issued an Order Granting Reconsideration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

According to BEM 270 (7-1-2014), page 1, individuals must apply for benefits for which they may be eligible. This includes taking action to make the entire benefit amount available to the group. Any action by the individual or other group members to restrict the amount of the benefit made available to the group causes ineligibility. BEM 270, p. 1. Except for contractual care arrangements, the requirements in this item **do not** apply to a past month determination for MA when the applicant has taken action to apply for potential benefits. BEM 270, p. 1.

For SDA, refusal of a program group member to pursue a potential benefit results in group ineligibility. BEM 270, p. 1.

State-funded FIP/SDA clients receiving disability-related MA must apply for SSI as a potential resource. Refusal to pursue a potential resource results in group ineligibility. A repay agreement is required when there is a potential benefit for state-funded FIP/SDA clients. See BEM 272, State-Funded FIP, SDA Repay Agreements. BEM 270, p. 1.

SSI benefits are paid to persons who are aged (65 or older), blind or disabled. The following clients must be referred to SSA to apply for SSI:

- Persons age 65 or older.
- Person receiving or eligible for SDA and disability-related MA.
- Adults in a FIP group who are blind or who claim illness or injury prevents them from working for at least 12 months. However, do 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. A child is considered disabled for SSI purposes if the child meets all of the following:

- The child has a physical or mental condition(s) that can be medically proven.
- The condition(s) results in **marked and severe** functional limitations.
- The condition has lasted or is expected to last at least 12 months or end in death.
- The child is not working at a job considered “substantial work” by SSA.

Note: In rare circumstances, the MRT or SSI Advocate might request that certain clients not be referred to SSA to apply for SSI at the time of approval for SSI-related Medicaid. Such exemption will be certified on the DHS-49-A, Medical-Social Eligibility Certification. See BEM 270.

Clients who receive state-funded FIP or SDA who meet potential eligibility for SSI **or have** a medical review team (MRT) decision that indicates they meet the criteria for MA based on blindness or disability are required to pursue SSI; see BEM 270, Pursuit of Benefits. BEM 271 (10-1-2014), p. 1.

Refer SDA clients to the SSA to apply for SSI when they also receive or have been found as potentially eligible for Medicaid (MA) based on a MRT decision that they are blind or disabled. BEM 271, p. 1.

SDA clients receiving or those who have been found eligible for disability-related MA **must** comply with the requirements listed in this item. These clients **must** also cooperate with all SSA requirements and procedures when applying for SSI benefits. Failure to comply as required results in group ineligibility for SDA. BEM 271, p. 1.

An SSI hearing **must** be requested **within 60 days** of the SSI application denial date. BEM 271, p. 8 (With emphasis added).

An appeals council review request must be filed within 60 days of the SSI hearing decision date. The specialist must:

1. Send the client a DHS-1551, a DHS-1552 marked “Appeal” and a return envelope.
2. Verify whether the client has requested an appeals council review within 10-calendar-days of the date the DHS-1551 is sent to the client. Acceptable verification that an Appeals Council brief has been filed includes any of the following:
 - DHS-1552.
 - Single Online Query (SOLQ).
 - Documented telephone contact or written acknowledgment from SSA.

Note: SSA does allow good cause for late filing. As a result, allow an extension if the client is unable to file the Appeals Council brief at SSA within the 10-calendar-day limit for any of the following reasons:

- The client is ill.
 - The client's county of residence does not have an SSA district office. The client or the client's legal representative is still preparing the appeal.
3. If the client is cooperating with the SSI application process, 3. continue with step 4. **If the client is not cooperating, close state-funded FIP/SDA and MA-P.** End procedure.
4. This verification may include any of the following:
- DHS-1552.
 - Single Online Query (SOLQ).
 - SSA-831. Documented telephone contact or written acknowledgment from SSA.
5. If the appeals council decision is a denial, the decision is now binding on the MA case. The Final SSI Eligibility Determination procedures are listed below, as well as in BEM 260.

See BEM 271, pp. 9-10.

In the instant request for reconsideration, Claimant's attorney offers several arguments. First, Claimant's attorney submits that at the time the Department mailed the notice of case action denying his SDA assistance, he had filed a SSI appeal with the SSA Appeals Council. According to Claimant's attorney, this is supported by Exhibit 1, p. 4 of the record.

The record shows that Exhibit 1, page 4 (which is actually Exhibit 1, pages 12 and 13) is Claimant's completed Verification of Application or Appeal for SSI/RSDI (DHS-1552) where he indicates: (1) hearing decision date is May 30, 2014; (2) responds "no" to the question whether the hearing decision was appealed; and (3) "not yet—still in appeals period." (Exhibit 1, pp 12-13). These responses are ambiguous and do not comply with the spirit of BEM 270 and BEM 271 which requires the SDA applicant to not only file an appeals council review, but also to provide verification that this had been done within 60 days. The record shows that Claimant failed to do either.

Department policy provides that acceptable verification includes: DHS-1552, Single Online Query (SOLQ) and SSA-831 documented telephone contact or written acknowledgment from SSA. BEM 271, p. 10. In an attempt to obtain this verification, the record shows the Department mailed Claimant: (1) a Medical Determination Checklist (DHS-3503-MRT) requesting documentation to show that he had requested an appeal through Social Security with the Appeals Council; (2) a Notice to Apply (DHS-

1551) also requiring him to show his appeal with the SSA Appeals Council; as well as (3) Verification of Application of Appeal for SSI/RSDI (DHS-1552). All of these verifications were due by July 7, 2014. Rather than provide clear, unambiguous responses to the requests for verification, Claimant provided a copy of a letter from an attorney which shows that he planned to pursue a disability appeal with the SSA. At no time did Claimant provide proper responses to the Department nor did he properly provide the above requested verifications.


Second, Claimant's attorney argues that although Claimant failed to provide verification, the spirit of the policy was adhered to because the Appeals Council later produced a letter to show he requested an appeal. The fact that the SSA issued an Order later does not vitiate Claimant's responsibility to provide proper and timely verifications to the Department concerning whether he filed an appeal with the SSA's appeals council. To find otherwise would be to ignore the Department's written policy. In addition, Claimant could have completed the DHS-1551 or DHS-1552 and submitted it to the Department by the due date. Because Claimant, who was represented by an attorney at the time, failed to comply with the Department's requests for verification that an appeals council brief had been filed, the ALJ properly affirmed the Department's closure of the SDA case.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that the Supervising Administrative Law Judge that the Department properly closed Claimant's SDA case for failure to properly pursue the potential benefit of SSI by providing proper verification of an appeal with the SSA appeals council.

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, **AFFIRMS** the Department's SDA determination.

IT IS SO ORDERED.



C. Adam Purnell
Supervising Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: September 15, 2015

Date Mailed: September 15, 2015

NOTICE: The law provides that within 30 days of receipt of this Decision, the Appellant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

CAP/las

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