



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 25, 2018
MAHS Docket No.: 18-005150
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on July 23, 2018, from Detroit, Michigan. The Petitioner was represented by herself. ██████████, Petitioner's husband also appeared. The Department of Health and Human Services (Department) was represented by Dan Vendzuh, Assistance Payments Supervisor, and Horacio Vargas, Assistance Payments Worker.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On October 11, 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On April 25, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program citing failure to cooperate, PD 10, citing 20 CFR 404.1512 - 1519t and 20 CFR 216.912- 919t. (Exhibit B).
3. On May 2, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on failure to return documentation to complete disability

determination service (DDS) (fail to appear for an exam scheduled by DDS) citing failure to cooperate. (Exhibit A, pp. 412-415.)

4. The Petitioner was sent two appointment notices for an Internal Medical Exam with [REDACTED] and an Adult Mental Status Evaluation. The Petitioner attended the Adult Mental Status Evaluation. The Petitioner did not attend the Internal Medical Exam. (Exhibit A, pp. 183-184.)
5. The Internal Medical Exam was scheduled and an appointment reminder for the exam was sent by DDS on January 24, 2018. On January 29, 2018, a reminder letter with note to call to confirm highlighted. Petitioner called and confirmed both exams on January 21, 2018. (Exhibit A, p. 263.) The appointment was scheduled for [REDACTED], 2018, at [REDACTED] a.m., and the Petitioner did not attend; and there was no contact with patient for [REDACTED]. (Exhibit A, p. 263.)
6. An Appointment was rescheduled for Petitioner, and a letter was sent to Petitioner on March 9, 2018, scheduling an exam for [REDACTED], Michigan, on [REDACTED] 2018. A reminder letter for the appointment was mailed to Petitioner on April 3, 2018. Petitioner called to confirm appointment on April 9, 2018. A reminder voicemail regarding the appointment was left by DDS. The Petitioner did not keep this [REDACTED] appointment. Note in Case Development sheet for DDS notes: Petitioner missed a Physical Exam on [REDACTED] 2018, and on [REDACTED] 2018. (Exhibit A, pp. 264-266.)
7. On May 22, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 416).

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the first issue which must be reviewed is whether the Department based upon the Disability Determination Service (DDS) denial of the Petitioner's application for

failure to cooperate due to missing a rescheduled medical examination was correct. The Petitioner testified during the hearing that she could not attend a scheduled exam for [REDACTED], 2018, due to inclement weather, and called the number and left a message that she could not attend due to the weather. However, a review of the DDS file does not demonstrate a call was received from the Petitioner regarding the missed examination appointment and the reason for her not appearing at the appointment. In addition, the DHHS caseworker in charge of the case testified that he did not hear from the Petitioner regarding the missed exam appointment. The caseworker further testified that he did not hear from the DDS that Petitioner missed the exam and that it would be rescheduled due to the bad weather. Petitioner did not follow up with either the Department or DDS. The [REDACTED], 2018, missed appointment was the second appointment that was missed and was a rescheduled appointment.

The [REDACTED], 2018, examination appointment letter was sent to Petitioner on March 2, 2018, and was an appoint with [REDACTED] – [REDACTED] in [REDACTED] Michigan. The Notice was sent to the Petitioner at the correct address. (Exhibit A, p. 180.) The Notice stated in bold type “Failure to keep this appointment may result in a denial of your claim or cessation of benefits... If you are absolutely not able to keep the appointment, have problems with transportation or your doctor tells you not to have the examination, call immediately. On the same day the Notice of the exam was sent, a Confirmation of Disability Appointment was sent to be returned by the Petitioner. (Exhibit A, p. 182.) (See also Document Index Exhibit A, p. 176.)

On April 3, 2018, a Reminder to Attend Medical Examination for [REDACTED], 2018, was sent advising the Petitioner if she had not contacted the Office to confirm the appointment or if you have problems keeping this appointment, you need to call this number immediately. (Exhibit A, p. 178.) The appointment had been previously confirmed by the Petitioner on March 5, 2018. (Exhibit A, p. 179.)

Department policy provides:

A client who refuses or fails to submit to an exam necessary to determine disability or blindness **cannot** be determined disabled or blind and you should deny the application or close the case. It is not necessary to return the medical evidence to DDS for another decision in this instance. BEM260 (July 2015), p. 5.

In addition, the DDS denied the application with a finding that Petitioner was not disabled citing the applicable federal regulations for failure to appear for a scheduled examination. 20 CFR 404.1518 provides:

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination

or test which we arranged for you, we may determine that your disability or blindness has stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination. We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have a good reason for failing to attend a consultative examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

- (1) Illness on the date of the scheduled examination or test;
- (2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;
- (3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test, or;
- (4) Having had death or serious illness occur in your immediate family.

(c) *Objections by your medical source(s).* If any of your medical sources tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your medical source(s) may agree to another type of examination for the same purpose. 20 CFR sec. 404.1518

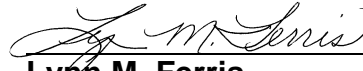
Based upon the record presented, the evidence did establish that the Petitioner did miss a rescheduled examination that she had confirmed; and the DDS had also reminded her to attend; and the record was devoid of any reference to the Petitioner contacting DDS, [REDACTED] or the Department on the day of the exam to advise anyone that she could not attend due to bad weather conditions. Therefore, it is determined that the DDS denial was correct and in accordance with the federal regulations and Department policy in BEM 260 regarding denial due to failure to attend and complete an examination.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds the Department properly denied the Petitioner's SDA application for failure to attend a scheduled examination and therefore correctly determined that Petitioner was not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

LMF/



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Dan Vendzuh
MDHHS-Otsego-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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D Smith
EQAD
L Karadsheh
L M Ferris
MAHS