



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 14, 2018
MAHS Docket No.: 18-006477
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 August 18, 2018, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist and [REDACTED], Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the 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 August 30, 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On March 22, 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 A, p. 223).
3. On March 23, 2018, the Department sent Petitioner a Notice of Case Action denying the application finding Petitioner not disabled 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, p. 254)

4. The Petitioner was sent an appointment notice for a Mental Status Evaluation Consultative Examination which he did not attend. The DDS/MRT was unable to contact Petitioner to reschedule. (Exhibit A, pp. 220.)
5. The DDS/MRT found the Petitioner failed to cooperate and there was not sufficient evidence in the Medical Evaluation Review packet to make a determination. (Exhibit A, pp. 221 and 223).
6. At the hearing the Petitioner testified he was incarcerated during the application processing period. An Interim Order dated August 13, 2018 was sent affording the Petitioner to provide proof of his incarceration dates.
7. The Petitioner was incarcerated for non-payment of child support from [REDACTED] through [REDACTED] and could not attend any examination during that period. Petitioner Exhibit B.
8. An appointment for a consultative exam was scheduled for January 22, 2018 at 9:00 a.m. which the Petitioner did not attend. Thereafter, another appointment was attempted to be rescheduled on or about February 28, 2018 but DDS was unable to reschedule due to no call back to reschedule by Petitioner. Exhibit A, pp. 228 and 229.
9. On June 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 Disability Determination Services (DDS) attempted to schedule a consultative Mental Status Exam and ultimately denied the Petitioner's application for SDA due to Petitioner's failure to appear for the exam and failure to reply to DDS's request to reschedule the exam. Thereafter, the Department denied the Petitioner's SDA application based upon failure of Petitioner to cooperate and insufficient evidence

to establish disability. At the hearing the Petitioner testified that he was incarcerated from [REDACTED] through A [REDACTED] and did not receive the appointment notice and could not reschedule an exam due to his incarceration. In support of his contention, the Petitioner provided a Booking Sheet confirming his incarceration for this period. Exhibit B.

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. BEM 260 (July 2015), p. 5.

Federal Regulation, 20 CFR 404.1518 also 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 not attend the consultative examination, however, the Petitioner was incarcerated during the time of the exam and could not attend and thus did not receive timely notice of the scheduled exam. Therefore, based upon the evidence presented, it is determined that the DDS denial was incorrect because under the circumstances, the Petitioner could not attend the exam and did willfully fail to cooperate due to not receiving notice. Thus, in accordance with the federal regulations and Department policy in BEM 260 the denial for failure to to attend and complete an examination and failure to cooperate must be reversed.

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's Determination finding the Petitioner not disabled for purposes of the SDA benefit program due to failure to cooperate is not supported by the evidence presented.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. The Department shall re-register and process the Petitioner's August 30, 2018 application for SDA and determine eligibility.
2. If the Department determines that Petitioner is eligible for SDA the Department shall supplement the Petitioner for SDA benefit, if any, the Petitioner is eligible to receive.

LMF/tlf



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

Via Email:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]