



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: September 9, 2020
MOAHR Docket No.: 20-004958
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on August 26, 2020, from Detroit, Michigan. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Haysen Hosny, hearing facilitator

ISSUE

The issue is whether MDHHS properly terminated Petitioner's eligibility for State Disability Assistance (SDA).

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 [REDACTED], 2020, Petitioner applied for SDA benefits.
2. From February 2020 through April 2020, Petitioner received SDA benefits.
3. On March 16, 2020, Petitioner requested a hearing to dispute SDA eligibility from January 2020 and receipt of verification to establish disability under SDA
4. On April 1, 2020, MDHHS terminated Petitioner's MA eligibility beginning May 2020 due to Petitioner not being disabled.
5. On July 1, 2020, Petitioner requested a hearing to dispute the termination of SDA benefits.

6. On July 18, 2020, an administrative law judge (ALJ) ordered MDHHS to determine Petitioner's SDA eligibility for January 2020, and to issue Petitioner a Medical Determination Verification Checklist.
7. As of August 26, 2020, MDHHS failed to establish that Petitioner's SDA eligibility was reinstated.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of SDA benefits. Exhibit A, pp. 35-36. A Notice of Case Action dated April 1, 2020, stated that Petitioner's SDA eligibility would end May 2020. Exhibit A, pp. 3-6.

MDHHS first contended that Petitioner failed to timely request a hearing. Petitioner requested a hearing on July 1, 2020, after MDHHS sent notice on April 1, 2020.

Generally, a client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (January 2020) p. 6. Though policy states that clients have 90 days to request a hearing, in practice, MDHHS sometimes allows for more than 90 days. For example, when the 90th day falls on a non-business day (e.g. Saturday, Sunday, or holiday), MDHHS extends the hearing request deadline to the following business day. *Id.*, p. 7.

Petitioner requested a hearing 91 days after MDHHS mailed written notice. Notably, the Notice of Case Action stated that Petitioner had through July 1, 2020, to timely request a hearing. Exhibit A, p. 5. It is not known why MDHHS gave Petitioner through July 1, 2020, to request a hearing, as it was the 91st day after written notice, but this is irrelevant. Petitioner requested a hearing by the due date given on her written notice.

Given the evidence, Petitioner timely requested a hearing to dispute a termination of SDA beginning May 2020. Thus, her hearing request will not be rejected for being untimely.

MDHHS alternatively argued that Petitioner's hearing request was superfluous because of a previous Hearing Decision. Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical and (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). To establish that res

judicata bars Petitioner's hearing request dated July 1, 2020, MDHHS must establish that a previous hearing decision did or could have addressed Petitioner's dispute.

On March 16, 2020, Petitioner also requested a hearing to dispute SDA eligibility. The result of Petitioner's hearing request was a Hearing Decision dated July 8, 2020, which seemingly addressed two issues of Petitioner's SDA eligibility.

The first issue concerned Petitioner's SDA eligibility for January 2020. The administrative judge found that Petitioner received SDA benefits from February through April 2020, "but no evidence was presented that the benefits were denied in January of 2020". Exhibit A, p. 9. As a result, the judge found that the "Department failed to establish that Petitioner was not eligible for SDA benefits as of [REDACTED], 2020, when the Department received her application for assistance".¹ *Id.* Res judicata is inapplicable because Petitioner did not dispute her SDA eligibility from January 2020 when she requested a hearing on July 1, 2020. Consequently, the ALJ ordered MDHHS to determine Petitioner's eligibility for her SDA application from January 2020

Secondly, the Hearing Decision dated July 8, 2020, addressed the termination of Petitioner's SDA eligibility. The administrative judge first concluded that MDHHS "failed to establish that Petitioner was given written notice of the benefit closure". Exhibit A, p. 9. A remedy that MDHHS reinstate SDA benefits until written notice is issued would seem proper, but the administrative judge went further. The judge stated that the evidence established that Petitioner's SDA eligibility ended because of an alleged refusal to provide documents, before finding that Petitioner did not refuse to provide documents. As a result, the ALJ ordered MDHHS to "[s]end Petitioner... a Medical Determination Verification Checklist ... so that her case can be sent to the Medical Review Team with current documentation" and to issue written notice accordingly.

The present case can be primarily distinguished from the previous case because the Hearing Decision dated July 8, 2020 never referenced MDHHS's termination notice dated April 1, 2020. Written notice of termination was not listed within the Findings of Fact nor his Conclusions of Law. No reference to the written notice dated April 1, 2020, is supportive in rejecting that res judicata is applicable to Petitioner's current dispute over the notice. This conclusion is further supported by the fact that Petitioner initially requested a hearing on March 16, 2020, which was before MDHHS issued a termination notice on April 1, 2020. Generally, hearing jurisdiction is limited to events which occur before a client's hearing request date.

¹ Petitioner could not receive SDA in January 2020 for her application dated [REDACTED], 2020. MDHHS is to begin cash assistance in the pay period in which the application becomes 30 days old. BAM 115 (October 2019) p. 27. For SDA, a pay period is either the first through the 15th day, or the 16th through the last day of the month. BAM 400 (October 2018) p. 1. The 30th day following Petitioner's application date would be the pay period for the first half of February 2020; thus, this is the earliest pay period for which Petitioner could receive SDA benefits.

Furthermore, if MDHHS contends that res judicata bars Petitioner's dispute over a termination of Petitioner's SDA eligibility beginning May 2020, documentary evidence that MDHHS continued Petitioner's SDA eligibility would be expected. MDHHS presented no such evidence.

Given the evidence, the Hearing Decision dated July 8, 2020 did not address the written notice of SDA closure dated April 1, 2020. Thus, Petitioner's dispute is not barred by res judicata and Petitioner's dispute may proceed on its merits. The Notice of Case Action dated April 1, 2020, stated that Petitioner's SDA eligibility ended because she is not disabled.

When an applicant for SDA does not meet one of the criteria for disability (e.g. certified as disabled by Social Security Administration, receiving Medicaid based on disability, participating with Michigan Rehabilitation Services...), MDHHS is to determine disability by following the instructions within BAM 815. BAM 261 (April 2017) p. 4. The Disability Determination Services will gather and review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id.*

In the present case, MDHHS presented no evidence that Petitioner was not disabled. Due to the absence of evidence, MDHHS failed to establish that Petitioner's SDA benefits properly ended beginning May 2020. As a remedy, Petitioner is entitled to reinstatement of benefits.

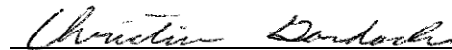
DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's SDA eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's SDA eligibility effective May 2020, subject to the finding that MDHHS failed to establish that Petitioner was not disabled; and
- (2) Issue a supplement of benefits and notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



Christian Gardocki

Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

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

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

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

Via Email:

MDHHS-Macomb-36-Hearings
BSC4 Hearing Decisions
L. Karadsheh
MOAHR

Petitioner – Via First-Class Mail:

