

[REDACTED]
APPELLANT

v.

* BEFORE STEPHEN W. THIBODEAU,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHS-[REDACTED] 04-18-31665

* * * * *

DECISION

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STATEMENT OF THE CASE

On July 31, 2018, the [REDACTED] (local department) terminated Temporary Disability Assistance Program (TDAP) benefits for [REDACTED] (Appellant). On October 2, 2018, the Appellant filed a request for hearing with the local department to contest the termination of her TDAP benefits.

On November 20, 2018, I held a hearing at the local department's offices at [REDACTED] Maryland. Code of Maryland Regulations (COMAR) 07.01.04.01. [REDACTED] Appeals Representative, represented the local department. The Appellant represented herself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Human Services, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 07.01.04; and COMAR 28.02.01.

ISSUE

Did the local department properly terminate the Appellant's TDAP benefits on July 31, 2018?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the Hearing Summary on behalf of the local department as LD Exhibit 1, which included the following attachments:

- Request for Hearing, October 2, 2018
- Notice to the Appellant, July 31, 2018
- Family Investment Administration Request for Information to Verify Eligibility for the Appellant, May 25, 2018
- Letter from [REDACTED] to the Appellant, June 6, 2018
- State Online Query, July 19, 2018
- Letter from [REDACTED] to the Appellant, July 11, 2018
- Letter from [REDACTED] to "To Whom it May Concern," June 11, 2018
- Letter from the Social Security Administration (SSA) to the Appellant, August 10, 2018
- Letter from the SSA to the Appellant, September 25, 2018
- Temporary Disability Assistance Program Manual, Section 202
- COMAR 07.03.05.04

The Appellant did not offer any exhibits for admission as evidence.

Testimony

[REDACTED] Appeals Representative, read the Hearing Summary and testified on behalf of the local department. The Appellant testified on her own behalf.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. Prior to July 31, 2018, the Appellant was receiving Temporary Disability Assistance (TDAP) benefits.
2. On May 24, 2018, as part of a review of the Appellant's TDAP benefits, the local department issued a request for information to the Appellant to verify the Appellant's eligibility

for TDAP benefits. Specifically, the local department was seeking verification of an appeal by the Appellant for Social Security Disability benefits (SSDI) and/or Supplemental Security Income (SSI) with the Social Security Administration (SSA).

3. On June 6, 2018, the Appellant informed the local department that she had retained a law firm, [REDACTED] and the law firm was preparing an appeal to the SSA.

4. On June 25, 2018, the Appellant visited the local department's office and provided the local department with a letter from [REDACTED] dated June 6, 2018, which stated that the Appellant had a case pending with the SSA in her effort to obtain SSDI and/or SSI. During that visit, a representative for the local department informed the Appellant that the letter was sufficient for her to continue her TDAP benefits.

5. On July 11, 2018, [REDACTED] informed the Appellant that she had lost her case with the SSA, and urged her to file a new application for SSDI and/or SSI.

6. On July 19, 2018, the local department ran a State Online Query to determine the status of the Appellant's case with the SSA. The local department could not confirm the Appellant had a pending case with the SSA.

7. On July 31, 2018, the local department terminated the Appellant's TDAP benefits because it could not confirm the Appellant had a pending case or appeal with SSA.

8. The Appellant filed a new claim for SSDI and/or SSI with the SSA on August 3, 2018, and the SSA confirmed the new claim on August 10, 2018.

9. As of September 25, 2018, the SSA was still working on the Appellant's claim filed on August 3, 2018.

DISCUSSION

TDAP is a State-funded program that provides assistance to low-income disabled adults who are ineligible for other categories of assistance. COMAR 07.03.05.01A. An individual is

technically eligible for TDAP benefits if the individual is unemployed; financially in need as described in COMAR 07.03.05.07; determined to have an impairment of three months or more; and ineligible for a category of means-tested cash assistance in which there is federal financial participation, except that an individual who has applied for SSDI or SSI may be eligible for TDAP during the period the SSDI or SSI application is being processed. COMAR 07.03.05.04A(3) through (6).

At issue is the Appellant's termination of TDAP benefits. Therefore, the local department bears the burden of proof that the termination of the Appellant's TDAP benefits was proper. COMAR 07.01.04.03B(1) and .12B(2). The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 07.01.04.12C(2); *see also Bernstein v. Real Estate Comm'n of Md.*, 221 Md. 221, 232 (1959). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so," when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005). For the reasons discussed below, I find the local department has met its burden of proof.

The local department contended that it terminated the Appellant's TDAP benefits because she failed to provide verification that she had applied for SSDI and/or SSI or that a claim for SSDI and/or SSI was being appealed at the time of her review of TDAP benefits on May 24, 2018. The relevant regulations are COMAR 07.03.05.04E and F, which state in pertinent part as follows:

E. To remain eligible for assistance, an individual who is potentially eligible for SSI or any other benefit *shall*:

- (1) Apply for the benefit; and
- (2) *Fully cooperate with all appropriate agencies by providing all information requested for the determination of eligibility as described in §F of this regulation.*

F. Cooperation includes actively pursuing an SSI application through all Social Security Administration appeal processes.

(Emphasis added).

The local department could not confirm the Appellant's SSA application for benefits or her SSA appeal prior to July 31, 2018, when the Appellant's TDAP benefits would be terminated. The local department attempted to obtain information from the Appellant regarding the status of her SSA application for benefits and any appeal beginning in May 2018. The Appellant did provide information related to her SSA appeal to the local department, specifically on June 25, 2018, when she went to the local department's office and produced a June 6, 2018 letter from her attorney indicating that an SSA appeal was being pursued. However, on July 19, 2018, the local department could not confirm any pending SSA case by the Appellant.

The Appellant expressed frustration with regard to the termination of her TDAP benefits, in particular because her understanding of the June 25, 2018 meeting with the local department was that, based upon the letter she produced from her attorney, her benefits would continue without interruption while she was pursuing her SSA case. Yet prior to the termination of her TDAP benefits on July 31, 2018, the Appellant knew that she had lost her appeal with SSA. This is clear from the July 11, 2018 letter from [REDACTED] to the Appellant which notes the unfavorable decision of her disability claim with SSA, and suggests that she file a new claim with the SSA. At a minimum, the Appellant knew approximately three weeks before her TDAP benefit was going to end that she no longer had a claim for SSDI and/or SSI pending, and therefore, would no longer be eligible for TDAP benefits.

I certainly appreciate the Appellant's frustration regarding what she was told by the local department on June 25, 2018. However, the information relayed to the Appellant was not incorrect; indeed, at the time of her meeting with the local department on June 25, 2018, there was a pending case with the SSA, and therefore, the local department could reasonably assure

the Appellant her TDAP benefits would continue upon confirmation of the Appellant's SSA case. The local department attempted to confirm that information on July 19, 2018, but was unable to do so because the case had been closed and the Appellant was denied disability benefits from the SSA. The Appellant never updated the local department with the information indicating her SSA case had been denied and subsequently waited until after her TDAP benefits had ended to reapply for benefits with the SSA on August 3, 2018, outside the eligibility period of her prior TDAP benefits. Therefore, she was required to apply for TDAP benefits again pending her claim for SSA benefits, but as of the date of the hearing, she had not done so.

For these reasons, I conclude that the local department has met its burden to show that the termination of the Appellant's TDAP benefits was proper. Because the local department could not confirm the Appellant's SSA application for benefits or her SSA appeal, it properly terminated the Appellant's TDAP benefits.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the local department properly terminated the Appellant's TDAP benefits on July 31, 2018, COMAR 07.03.05.04A(6), E and F.

ORDER

I **ORDER** that the [REDACTED] July 31, 2018 termination of the Appellant's Temporary Disability Assistance Program benefits is

AFFIRMED.

December 14, 2018
Date Decision Issued

Signature Appears on Original
[REDACTED]

Stephen W. Thibodeau
Administrative Law Judge

SWT/dlm
#177291

REVIEW RIGHTS

This is the final decision of the Department of Human Services. If you are dissatisfied with this final decision, you may file a petition for judicial review with the circuit court for the county where any party resides or has a principal place of business within thirty days of the date of this decision. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018) and Md. Rules 7-201 through 7-210. If you decide to file a petition for judicial review, and cannot pay the filing fee, you may petition the court to waive it. The clerk of the court can advise you about the fee. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

[REDACTED]

[REDACTED] (Emailed)