

[REDACTED]

APPELLANT

v.

[REDACTED]

[REDACTED]

[REDACTED]

* BEFORE NICOLAS ORECHWA,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHS- [REDACTED] 04-19-17247

* * * * *

DECISION

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STATEMENT OF THE CASE

[REDACTED] (Appellant) was a recipient of benefits from the Temporary Disability Assistance Program (TDAP) through October 31, 2018. On November 13, 2018, the Appellant applied for a redetermination of her TDAP benefits. On December 27, 2018, the [REDACTED] [REDACTED] (local department) notified the Appellant that it denied her TDAP redetermination application because she failed to provide the requisite information to establish eligibility. On May 24, 2019, the Appellant requested a hearing to challenge the local department's decision.¹

¹ At the hearing, the Appellant testified she requested a hearing months prior to May 24, 2019, but the local department did not act on transmitting that hearing request to the Office of Administrative Hearings (OAH). The Appellant contended she first requested a hearing in November 2018. The local department did not dispute the Appellant's contention in that regard. Given the uncertainty of the Appellant's initial request for a hearing and the local department's lack of objection to her request for a hearing approximately five months after its denial of her redetermination application, I find, for the purposes of this decision, she requested her hearing on May 24, 2019.

On July 1, 2019, I convened a hearing at the local department's office in [REDACTED] Maryland. Code of Maryland Regulations (COMAR) 07.01.04.10. The Appellant represented herself. [REDACTED] Appeals Representative, represented the local department.

The contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings (OAH), and the Rules of Procedure for the Department of Human Services (Department) 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 correctly deny the Appellant's November 13, 2018 TDAP redetermination application because she failed to provide the requisite information to establish eligibility?

SUMMARY OF THE EVIDENCE

Exhibit

I admitted the following exhibit on behalf of the local department:

LD Ex. 1² Summary for Appeal Hearing:

- Summary, undated
- Appellant's Request for Fair Hearing, May 24, 2019
- TDAP Benefit History Listing, July 1, 2019
- Appellant's myDHR³ program application, November 13, 2018
- Family Investment Administration (FIA) Request for Information to Verify Eligibility, November 26, 2018
- FIA TDAP Medical Report Form 500-C, November 26, 2018
- Notice to Appellant of information needed, December 13, 2018
- Notice to Appellant regarding information needed for Form 500, December 14, 2018
- Authorization for reimbursement of interim assistance, November 26, 2018
- Facsimile transmission from the Appellant, January 24, 2019

² The document contains some handwritten notations unintended to be submitted into evidence. I have not considered those notations in rendering this decision.

³ On July 1, 2017, the Department of Human Resources (DHR) became the DHS.

- Facsimile transmission from [REDACTED] December 5, 2018
- Notice of Denial of Redetermination Application, December 27, 2018

The Appellant did not offer any documents into evidence.⁴

Testimony

Mr. [REDACTED] testified on behalf of the local department. The Appellant testified and did not offer other witnesses.

FINDINGS OF FACT

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

1. The local department approved the Appellant for TDAP benefits through October 31, 2018. On November 13, 2018, the Appellant submitted an application for redetermination of her TDAP benefits (redetermination application). In order for the local department to approve her redetermination application, the Appellant needed to complete two tasks:⁵

- Submit a DHR/FIA 500 Form⁶ (500 Form) completed by her treating physician;
- and
- Submit proof she applied for SSDI benefits.

⁴ At the close of the hearing on July 1, 2019, the Appellant asked if she could speak to her attorney about submitting some unspecified documents related to her Social Security Disability Insurance (SSDI) application. I told the parties that I would hold the record open seven days to allow the Appellant to supply the documents. I instructed the Appellant to e-mail the documents to both the OAH document submission e-mail address and to the local department. On July 8, 2019, at 6:01 p.m., the Appellant sent a convoluted e-mail to the OAH and the local department discussing her attempts to contact her attorney and referencing an SSDI appeals case number. The Appellant did not attach any documents to the e-mail. However, on July 10, 2019, at 11:59 a.m., two days after I closed the record, the Appellant sent another e-mail stating "Please accept attached documents I just received by email from my Social Security Disability attorney." No documents were attached to the Appellant's July 10, 2019 e-mail. In response, I instructed my secretary to e-mail the Appellant and request she provide the documents she said she attached to her July 10, 2019 e-mail, so I could make them part of the record. On July 11, 2019 at 7:35 a.m., my secretary sent the Appellant an e-mail requesting those documents. The Appellant responded later on July 11, 2019, stating "I do not have recent(sic) filed documents. My SD attorney filed. His letter attached below states for you are free to contact them." The Appellant attached no documents to her e-mail. Since the Appellant either contradicted herself or was incapable of correctly responding to my secretary's request, and because her July 10, 2019, submission was late, I am not considering any information the Appellant provided post July 1, 2019. I shall keep the e-mail exchanges received as part of the record. COMAR 28.02.01.22B(1).

⁵ The redetermination application required the Appellant complete other tasks, however those are not at issue.

⁶ The 500 Form is a medical form that the Appellant's treating physician completes and signs. DHS, *Temporary Disability Assistance Program Manual* § 201.2, at 1 (May 2017) [hereinafter TDAP Manual].

2. The Appellant timely submitted a 500 Form satisfactorily completed by her physician.
3. The Appellant applied for Social Security Disability Insurance (SSDI) benefits.
4. The Appellant did not submit proof she applied for SSDI benefits.

DISCUSSION

Applicable Law

TDAP is a State-funded program that provides essential medical, housing, and other services to low-income disabled adults who are ineligible for other categories of assistance. COMAR 07.03.05.01A. Eligibility for TDAP is based on the individual's assessed need and is subject to available funding. COMAR 07.03.05.01B. As part of an application for TDAP, the local department shall "[r]equire an individual applying for benefits to file an application on forms specified and approved by the Department." COMAR 07.03.01.03H(1)(a).

Analysis

"An applicant who has requested a hearing pursuant to Regulation .03A of this chapter bears the burden of: (a) Going forward to establish a prima facie case of entitlement to the assistance, approval, license, or registration sought, and (b) Persuasion that the agency decision was incorrect." COMAR 07.01.04.12B(1). The burden of proof in this contested case hearing is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 07.01.04.12C(2). 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) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)). For the following reasons, I find that the local department incorrectly determined the Appellant did not submit a complete 500 Form. However, I find the local department correctly determined the Appellant failed to provide proof of her pending SSDI

application. Because proof of a pending SSDI application is a prerequisite for approval of TDAP benefits, I shall affirm the local department's denial of the Appellant's TDAP redetermination application.

The 500 Form

"An individual shall provide, on the required State form, adequate medical findings to support the application for assistance." COMAR 07.03.05.05A(1). "An applicant shall support the application for TDAP with a medical report before a decision is made on eligibility."

COMAR 07.03.05.05B(2)(a). "The medical report shall: (i) Contain a statement of the nature and estimated duration of the disabilities; (ii) Specify whether a medical diagnosis of substance abuse is indicated; and (iii) Be signed by the examining physician." COMAR 07.03.05.05B(2)(b).

The parties did not dispute that the Appellant timely provided her 500 Form. The parties dispute whether the Appellant's treating physician adequately completed one discrete section of the 500 Form. For the following reasons, I find the Appellant substantially complied with the governing regulations and adequately completed the 500 Form.

The local department contends the Appellant failed to submit a complete 500 Form because her treating physician did not include a specific start date and end date for her ailment. The portion of the 500 Form at issue states the following:

Please give the length of time the patient's impairment is expected to last.

____/____/____ to ____/____/____
Month Day Year Month Day Year

(emphasis in original).

The local department is correct that the Appellant's treating physician did not include specific dates on the 500 Form. However, the Appellant argued that her treating physician wrote "see section C." In section C of the 500 form, the treating physician wrote the following: "Seven

Percent (7%) **permanent** partial impairment to the left lower extremity secondary to ankle fracture sustained [REDACTED] 2014” (emphasis added). Thus, her physician complied and stated a time within which her impairment should last. The local department contended the Appellant is required to provide a specific timeframe within which her ailment is expected to last.

TDAP Manual section 201.2 entitled “Medical Evaluation – Medical Report form (DHR/FIA 500)” reads in full as follows:

- A. The customer must provide, on the required State form, DHR/FIA 500, medical findings to support the application for assistance.
- B. Case managers must give a DHR/FIA 500 for each of the customer’s treating providers and explain that a licensed physician, psychiatrist, psychologist, chiropractor, nurse practitioner, or licensed health practitioner must complete the form.
- C. The local department may:
 1. If the applicant does not have Medical Assistance, fill out and sign the top section of the Purchase Authorization and Invoice. DHR/FIA 312 (Revised 11/14), and give it, along with the DHR/FIA 500, to the applicant to give to their health care provider, to supply the necessary medical findings to verify the impairment; and
 2. Give the applicant an envelope addressed to the case manager for the provider to return the DHR/FIA 500 and DHR/FIA 312 forms. The case manager forwards the 312 form immediately to the finance unit for payment.
- D. Individuals who are certified for MA⁷ based on **age only** must provide a DHR/FIA 500 that demonstrates a disability, since age is **not** considered a disability under TDAP regulations.
 - Such individuals must have a disability that is expected to last for 3-11 months to meet eligibility for TDAP Type 1, Short Term TDAP, or a disability that is expected to last for 12 months or more or result in death to meet one of the eligibility requirements for TDAP Type 2, Long Term TDAP.

(emphasis in original).

I agree with the Appellant that her physician adequately completed the 500 Form. Neither the TDAP Manual nor the COMAR regulations cited above⁸ require the Appellant to provide specific dates of the duration of her ailment. The only relevant language occurs in COMAR

⁷ MA is an abbreviation for “Medical Assistance.”

⁸ COMAR 07.03.05.05A(1) and COMAR 07.03.05.05B(2)(a) and (b).

07.03.05.05B(2)(b)(i), which requires the 500 Form⁹ to “[c]ontain a statement of the nature and estimated duration of the disabilities.” In this instance, I find the information the Appellant’s treating physician provided substantially complies with the regulation. While the treating physician may not have provided specific dates, he characterized the duration as permanent and provided a description and cause of the Appellant’s ailment. If the local department contends the specific information the Appellant’s treating physician provided disqualifies her for TDAP benefits, that is a separate issue which is not before me. I find the Appellant substantially complied with the regulations governing the 500 Form with regard to the nature and estimated duration of her disability.

The Appellant’s pending SSDI Application

An individual may be eligible for TDAP during a period when their SSDI application is pending. COMAR 07.03.05.04A(6). “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” (emphasis added). COMAR 07.03.05.04E. “Cooperation includes actively pursuing an SSI application through all Social Security Administration appeal processes.” COMAR 07.03.05.04F.

When the Appellant submitted her TDAP redetermination application, the local department provided her with a “Request for Information to Verify Eligibility” (Request to Verify). On the Request to Verify, the local department requested the following: “application for ssdi benefits – must apply for and provide proof there of” (LD Ex. 1) (emphasis added). The Request to Verify further required the Appellant to provide the proof of her pending application for SSDI benefits by December 5, 2018. At the hearing, I asked the Appellant whether she

⁹ The regulation refers to “Medical Report” and not the 500 Form. However, the TDAP Manual makes clear the 500 Form is intended to serve as a medical report. TDAP Manual, *supra*, § 201.2, at 1.

provided proof of her SSDI application at the time she submitted her redetermination application. The Appellant replied "I don't recall...is it a form?" She then said "No one asked."

I find, based on the Appellant's own testimony, she did not provide the local department proof she applied for SSDI by December 5, 2018. While the Appellant may believe simply applying for SSDI satisfies that requirement, that is not the case. The regulations impose a clear obligation upon the Appellant to cooperate with the local department and provide all requested documentation. COMAR 07.03.05.04E. I find the Request to Verify placed the Appellant on notice of the requested documentation and when the documentation was due. Accordingly, I find the local department properly denied her TDAP redetermination application.

At the hearing, the Appellant raised a variety of issues. The issues the Appellant raised are reasonable ones; however, none are germane to this decision. For example, she complained about the wait time for the hearing; she complained about her attempts to secure a hearing; she complained about not receiving notice her benefits were ending;¹⁰ and she complained about the variety of information she provided to the local department after the December 5, 2018 deadline.¹¹ The only issue I am to determine is whether or not she complied with the local department's lawful request that she supply proof she applied for SSDI prior to December 5, 2018. For the reasons set forth above, I find she did not.

¹⁰ The Appellant testified and presented evidence that she received notice her TDAP benefits were ending on October 31, 2018. The date of that notice was also October 31, 2018. She claimed she received no prior notices. The local department sent all notices in evidence to the Appellant at [REDACTED] Maryland [REDACTED] which she testified is the address where she both resided and received mail for years. The local department contended they sent a notice prior to October 31, 2018, advising the Appellant that her benefits for her prior certification period would be ending. Based on the fact the Appellant did not change addresses, I find no reason to believe the local department did not send the notice prior to October 31, 2018 to the Appellant's address of record. Regardless, the local department accepted the Appellant's November 13, 2018 redetermination application. Thus her complaints on this issue are not only irrelevant to the issues before me, they are also moot.

¹¹ The record contains no evidence she provided the local department with a copy of her pending SSDI application even after the December 5, 2018 deadline.

CONCLUSION OF LAW

I conclude as a matter of law that the local department correctly denied the Appellant's November 13, 2018 TDAP redetermination application because she failed to provide proof she applied for SSDI benefits prior to the deadline imposed by the local department. COMAR 07.03.05.04E.

ORDER

I hereby **ORDER** that the decision of the [REDACTED] [REDACTED] to deny the Appellant's November 13, 2018 TDAP application is **AFFIRMED**.

July 31, 2019
Date Decision Issued

Signature Appears on Original [REDACTED]

Nicolas Orechwa
Administrative Law Judge

NO/sw
#181081

REVIEW RIGHTS

This is the final decision of the Department of Human Services. A party aggrieved by this final decision may, within thirty (30) days of the date of this decision, file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for a county in which any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

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