

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Guy Marshall, :
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 Petitioner :
 :
 v. : No. 1835 C.D. 2009
 : Submitted: March 12, 2010
 Department of Public Welfare, :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: June 7, 2010

Guy Marshall (Marshall) petitions for review, *pro se*, of the August 20, 2009, final order of the Secretary of the Department of Public Welfare (DPW), which upheld the determination of the Bureau of Hearings and Appeals (BHA) that Marshall is ineligible for general assistance (GA) benefits under the Public Welfare Code (Code).¹ We affirm.

Marshall sustained injuries to his hip and right leg in a motor vehicle accident on or about December 9, 2007. On November 6, 2008, Marshall filed an application with the Wayne County Assistance Office (CAO) for GA benefits, cash or medical.² On December 4, 2008, the CAO received a completed and signed

¹ Act of June 13, 1967, P.L. 31, *as amended*, 62 P.S. §§101-1503.

² A person may receive medical assistance if he or she is eligible for cash assistance. 62 P.S. §441.1(1), *added by* the Act of July 31, 1968, P.L. 904.

Employability Assessment Form (Form PA 1663), dated December 2, 2008, from Marshall's physician. The physician indicated that Marshall was temporarily disabled and that his disability began on December 9, 2007, and was expected to last until June 9, 2008, five months *before* he filed his application for benefits. Marshall provided no documentation to verify that he was disabled at the time of his application, nor did he establish that he satisfied the non-financial eligibility criteria for GA.³ Therefore, on December 8, 2008, the CAO issued two notices, one denying GA and one denying GA-related medical assistance.⁴

Marshall timely appealed to the BHA. After the appeal was filed, the CAO received a second Form PA 1663, dated January 13, 2009, completed and signed by Marshall's physician. The physician indicated that Marshall was not

³ The following persons satisfy the non-financial criteria for GA under section 432(3)(i) of the Code: a child who is under age eighteen or who is age eighteen to twenty and attending school full-time; parents in a two-parent household with a child who is under age thirteen or a disabled child who is under age twenty-one; a person assessed by a physician or psychologist as having a verified physical or mental disability; a non-parental caretaker of a child who is under age thirteen or an ill or disabled person; a person receiving treatment for substance abuse in a drug or alcohol program, if such program precludes employment; a pregnant woman whose pregnancy has been medically verified; or a victim of domestic violence receiving protective services. 62 P.S. §432(3)(i)(A)-(G); *see* 55 Pa. Code §141.61(c)(1).

⁴ In both notices, the CAO based its denial on Marshall's failure to satisfy the requirements of section 432(3)(i) of the Code, 62 P.S. §432(3)(i). Specifically, section 432(3)(i)(C) renders eligible for GA:

[a] person who has been assessed by a physician or psychologist as having a verified physical or mental disability which temporarily or permanently precludes him or her from any gainful employment.

62 P.S. §432(3)(i)(C).

disabled and was employable. Because the second Form PA 1663 was consistent with the first, the CAO took no further action.

The BHA held a telephone hearing on February 17, 2009. Testifying on behalf of DPW, CAO Income Maintenance Caseworker Supervisor Michael Miller explained that the CAO based its ineligibility determination on the first Form PA 1663, which stated that Marshall's temporary disability was expected to end on June 9, 2008, and Marshall's failure to establish at the time of his application that he was currently disabled or otherwise qualified for GA. (N.T., 2/17/09, at 21-22.) Miller further testified that the second Form PA 1663, which stated that Marshall was not disabled and employable, was consistent with the first. (*Id.* at 22.)

Marshall testified that he was unable to work due to his ongoing disability. (*Id.* at 13.) To support this testimony, Marshall presented two medical reports from Milton S. Hershey Medical Center, dated June 3, 2008, and November 18, 2008.⁵ Marshall contended that because the reports discussed his need for continued physical therapy, he was entitled to medical assistance. (*Id.* at 27.) Neither report, however, discussed Marshall's alleged disability or his inability to work.

On March 18, 2009, the BHA issued an order denying Marshall's appeal, concluding that he failed to establish his eligibility for GA. This decision was upheld by a final order of the BHA dated April 27, 2009. DPW then granted

⁵ Marshall also presented the patient page of a Form PA 1663, which was dated June 5, 2008, and signed by Marshall. Not only did this form pre-date Marshall's application, but, as the BHA correctly found, an incomplete Form PA 1663, signed only by the patient and not by a physician, is not proper medical evidence. (BHA Adjudication at 7.)

Marshall's request for reconsideration of the BHA's decision; however, on August 20, 2009, DPW issued a final order upholding the BHA's denial for the reasons stated in the BHA's March 18, 2009, adjudication. Marshall now petitions for review of that decision.⁶

Marshall first asserts that the denial of his application for GA benefits was based on insufficient evidence.⁷ We disagree.

An applicant seeking GA benefits based on a physical disability must provide documentation verifying a disability precluding gainful employment. 55 Pa. Code §141.61(c)(1)(iii)(A). This documentation must be on a form provided by DPW and completed by a physician or a psychologist. 55 Pa. Code §141.61(c)(1)(iii)(B); *see* 62 P.S. §432(3)(i)(C) (“The verification of the [applicant’s] physical ... disability must be established by written documentation in a form prescribed by [DPW] and must be based on acceptable clinical and laboratory diagnostic techniques, rather than a statement of symptoms by the applicant...”).

Here, Marshall's physician completed and signed two Form PA 1663s, each of which indicated that Marshall was not disabled at the time of his application for benefits. In fact, the most recent form, dated January 13, 2009, indicated that Marshall was presently employable. While Marshall's proffered medical reports

⁶ Our scope of review of a final DPW order is limited to determining whether constitutional rights were violated, an error of law was committed, or findings of fact were unsupported by substantial evidence. *Britt v. Department of Public Welfare*, 787 A.2d 457, 459 n.4 (Pa. Cmwlth. 2001); Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁷ The applicant bears the burden of proving his eligibility for GA benefits. *Jerrell v. Department of Public Welfare*, 455 A.2d 759, 761 (Pa. Cmwlth. 1983).

indicated that Marshall was receiving continued treatment and physical therapy, they did not prove that he was disabled and unable to work. More significantly, both of these medical reports *pre-dated* the Form PA 1663s submitted by Marshall's physician, which stated that Marshall was not disabled. Therefore, the evidence substantially supported the BHA's conclusion that Marshall failed to prove a physical disability that precluded him from obtaining gainful employment.

Next, Marshall asserts that he did not receive a fair hearing before the BHA because he was not given an opportunity to present witnesses or to cross-examine Miller at the hearing. These claims lack merit.

An applicant for GA benefits has the right to appeal DPW's determination and to receive a fair hearing. *See* 55 Pa. Code §275.1(a). During the hearing, the applicant shall have the opportunity "[t]o present evidence on his own behalf, to bring witnesses or documents he deems necessary, and to confront and cross-examine witnesses the county office, administering agency or social service provider will produce to support its decision or action." 55 Pa. Code §275.3(a)(1). The applicant also has the right "[t]o request a subpoena from the hearing officer for the production of evidence or witnesses that [the applicant] feels will be essential in obtaining necessary facts." 55 Pa. Code § 275.3(a)(2).

Here, Marshall failed to request subpoenas for any witnesses he wished to call on his behalf and failed to make arrangements for any such individuals to testify. (N.T., 2/17/09, at 9.) DPW is not obligated to secure witnesses or evidence for an applicant to present at the hearing. *See Integrated Behavioral Health Services v. Department of Public Welfare*, 871 A.2d 296, 300 (Pa. Cmwlth. 2005) (noting that,

where petitioner did not subpoena physician or otherwise arrange for her testimony at license revocation hearings, DPW was not responsible for securing petitioner's proof).

Moreover, Miller was present and available to Marshall for cross-examination, but Marshall declined to question him during the hearing. In fact, immediately following Miller's testimony, the administrative law judge gave Marshall the opportunity to "ask questions now," but he did not do so. (N.T., 2/17/09, at 24.) DPW cannot be blamed for Marshall's failure to cross-examine DPW's witness. *See Morris v. Department of Public Welfare*, 414 A.2d 176, 178 (Pa. Cmwlth. 1980) (concluding that petitioner was not denied due process at DPW proceeding, where he chose to be unrepresented by counsel and failed to present any witnesses on his behalf or cross-examine other witnesses effectively).

Accordingly, we find no error in the BHA's determination upholding the denial of Marshall's application for GA benefits.

ROCHELLE S. FRIEDMAN, Senior Judge

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| Department of Public Welfare, | : | |
| | : | |
| Respondent | : | |

ORDER

AND NOW, this 7th day of June, 2010, we hereby affirm the August 20, 2009, final order of the Secretary of the Department of Public Welfare.

ROCHELLE S. FRIEDMAN, Senior Judge