

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Hearing No. **2018120343**

In the Matter of Claimant(s):

Robert Colaco
P.O. Box 1949
Littlerock, CA 93543

DECISION

Pursuant to the authority of the Director,
I adopt the attached final decision.

REDACTED

Adopt Date: September 25, 2018

Eli Palomares
Administrative Law Judge II

State Hearing Record

Hearing Date:	July 2, 2018	Release Date:	September 26, 2018
Aid Pending:	No	Issue Codes:	[603-1]
Agency:	Los Angeles County	Agency Representative:	Mary Havey
Agency:		Agency Representative:	
Authorized Rep. Organization:		Authorized Rep.	
SSN:		SSN:	
AKA:		AKA:	
Case Name:	Robert Colaco	Language:	English
LA District/Case:		Companion Case:	

Appeal Rights

You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

The action of Los Angeles County discontinuing the claimant's In-Home Supportive Services (IHSS) benefits effective October 10, 2017, on the basis that the claimant did not tell the county where the claimant was currently living is not sustained as it was found that the claimant did not fail to provide an address to the county prior to the county discontinuing his IHSS benefits effective October 10, 2017. [603-1]

FACTS

By a notice of action dated September 27, 2017, the county notified the claimant that the claimant's IHSS benefits would discontinue effective October 10, 2017, because the claimant did not tell the county where the claimant is currently living.

On April 30, 2018, the claimant filed a hearing request disputing the county action.

A hearing was held on July 2, 2018. The claimant, a county representative, and an IHSS social worker supervisor appeared at the hearing by telephone. Social worker YLB did not appear at the hearing.

Procedural History/Jurisdiction

On November 7, 2017, the claimant filed a hearing request to dispute the county action discontinuing his IHSS benefits effective October 10, 2017.

The county representative stated that on March 15, 2018, the claimant failed to appear for the hearing. A decision was rendered in State Hearing Decision Number 17311249, adopted on March 19, 2018, holding that the claimant's November 7, 2017 hearing request concerning "Social Services" benefits was abandoned.

On March 28, 2018, the claimant filed another state hearing request disputing the county action discontinuing his IHSS benefits.

The county representative stated that a hearing was scheduled for April 26, 2018, at 1:00 p.m., and the claimant did not appear for the hearing. A decision was rendered in State Hearing Decision Number 180890012, adopted on May 1, 2018, holding that the claimant's March 28, 2018 hearing request concerning "Social Services" benefits was abandoned.

On April 30, 2018, the claimant filed another state hearing request disputing the county action discontinuing his IHSS benefits.

Based on this evidence, the county representative requested that the claimant's April 30, 2018 state hearing request be dismissed as the issue was addressed in two previous hearing requests in which a dismissal decision was rendered and adopted on March 19, 2018, and on May 1, 2018, for nonappearance.

The claimant testified that on March 12, 2018, his wife was told that she needed to see a specialist for an eye condition. He further testified that he did not appear for the March 15, 2018 hearing because he had to take his wife to the hospital. He also testified that he was concerned that his wife would be blind.

The claimant submitted into the record a Consultation Report dated March 12, 2018, which shows that the claimant was diagnosed with an eye condition and was referred to a retina specialist. The claimant also submitted into the record a March 15, 2018 medical record showing that the claimant's wife received emergency care for retinal detachment.

The claimant testified that he did not attend the April 26, 2018 hearing because his wife had a follow up medical appointment for her eye condition. The claimant submitted into the record an additional written response regarding the reason for not attending the April 26, 2018 hearing, which indicates the following:

I discovered that I had a hearing on April 26, 2018 while at [hospital name redacted] that my wife had. Yes, that is correct[.] I discovered of the hearing date of April 26, 2018, on April 26, 2018.

In rebuttal, the county representative submitted into the record a July 25, 2018 written response stating the following in relevant part:

Regarding the missed hearing on 03/15/2018 due to the doctor visit. The claimant should have contacted the State to let them know that he was not able to come to the hearing as soon as he knew he would not be available, or at least, when they got home from the doctor. However, he was allowed another reopening for his hearing issues and missed his hearing for IHSS (20180890012) and CalFresh (20180890004) on 04/26/2018 which were both dismissed for non-appearance as mentioned in the County Statement of Position. Although [the claimant] has stated he only picks up his mail every two to six weeks, he has been notified by the State of every scheduled hearing in a timely manner.

The record was held open for the claimant to submit into the record evidence in support of his contention that he had good cause for not attending the April 26, 2018 hearing at 1:00 p.m. The claimant submitted into the record a Treatment/Appointment Verification dated April 26, 2018, showing the following in relevant part:

On April 26, 2018, the claimant's wife was seen at Ophthalmology at 12:00 p.m. and left at 5:00 p.m. This verification also shows that the doctor who signed the verification wrote: "Please excuse patient & her husband for absence from court."

This evidence was forwarded to the county representative for response. The county representative informed the administrative law judge that the county had no response to the claimant's evidence.

IHSS Discontinuance

The county representative testified that the claimant is a 61-year-old male who lives with his wife, who is also the claimant's IHSS provider. The county representative further testified that the claimant has not provided the county with a residence address for the county to complete the claimant's annual assessment.

The county representative testified that the address the claimant provided to the county is a campground and not an "address" and that no one could find the claimant to perform an assessment as there was no space number provided. The county representative stated that during the time the county was trying to conduct the claimant's annual assessment, the county was in communication with the IHSS Program to determine whether an assessment could be

conducted at a campground since it is not permanent dwelling and that IHSS program informed the county that an assessment could not be conducted under the claimant's circumstances.

The IHSS social worker testified that the claimant would not give his address to social worker LYB prior to the IHSS discontinuance. The IHSS social worker supervisor acknowledged that the county did not have case comments confirming that the claimant refused to provide the county with an address but that she recalls having conversations with social worker LYB that social worker LYB attempted to call the claimant to obtain the claimant's address.

The claimant testified that social worker LYB never called him to confirm address at the campground prior to the county discontinuing his IHSS benefits. The claimant further testified that the claimant provided the county with his address on his Medi-Cal redetermination on August 10, 2017. The claimant also testified that the claimant was living at a camping facility to avoid being homeless. The claimant additionally testified that the campground address is an actual physical place which you can find on Google Maps.

The claimant testified that the county never told him that the campground address that he provided to the county was insufficient. The claimant further testified that he was not even aware that he needed to have a face-to-face assessment or his IHSS benefits would be discontinued until after the discontinuance. The claimant also testified that he was in communication with the supervising appeals hearing specialist VL in 2016 and informed VL where the claimant would be living at the campground and that VL never informed the claimant that there was a problem with the address.

In rebuttal, the county submitted into the record a written response dated July 11, 2018, arguing the following:

But, I just want to remind you that the IHSS office conducted an ex parte review to verify through the MEDS system the claimant's address which indicated a homeless address. The MEDS system is the only other system that they would have access to view.

In rebuttal, the county submitted into the record a written response dated July 25, 2018, arguing the following:

The County still contends that the denial was correct as the claimant had failed to provide an address of residence, because he had reported that he was homeless. The County acknowledges that he did report the address of the [name of campground redacted], but there are over a thousand campsites there. For IHSS purposes he would not be eligible to IHSS while homeless. As I stated in the previous letter the IHSS office did conduct an ex parte review to verify through the MEDS system the claimant's address which indicated homeless address.

It is found that the claimant did not fail to provide an address to the county prior to the county discontinuing his IHSS benefits effective October 10, 2017. This finding is based on the claimant's testimony that social worker LYB never called him to confirm address at the campground prior to the county discontinuing his IHSS benefits. This finding is further based on the acknowledgement by the IHSS social worker supervisor that the county did not have case comments confirming that the claimant refused to provide the county with an address but that she recalls having conversations with social worker LYB that social worker LYB attempted to call the claimant to obtain the claimant's address. This finding is also based on the county

representative's acknowledgement that the claimant did report to the county the address of the campground.

LAW

All the regulations cited refer to the Manual of Policies and Procedures, unless otherwise noted.

Jurisdiction

A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a state hearing. (§ 22-003.1.)

Effective January 24, 2007, a request for hearing shall be dismissed by written decision if it is abandoned. The claimant shall have the right to request the dismissal decision be set aside and have a new hearing if good cause is established for not attending the hearing. Such request must be made within 15 days of the date the dismissal decision is received. (§ 22-054.22.)

The criteria for good cause (for not attending a hearing) shall include, but not be limited to:

(1) The failure of the claimant to receive notice of the time and place of the hearing. The notice of the time and place of the hearing shall be mailed to the claimant's last known address and good cause shall not be established if the claimant failed to notify the county or Department of any change of address while the appeal was pending.

(2) The criteria set forth in Section 22-053.113.

(§ 22-054.222(a).)

Good cause applies if the claimant or authorized representative establishes that the hearing should be postponed for reasons that include, but are not limited to, the following:

- (a) A death in the family.
- (b) Personal illness or injury.
- (c) Sudden and unexpected emergencies that prevent the claimant or the claimant's authorized representative from appearing.
- (d) A conflicting court appearance that cannot be postponed.
- (e) The claimant contends that he/she is not adequately prepared to discuss the issues because he/she did not receive an adequate and/or language-compliant notice, and the Administrative Law Judge determines that the required notice was not received. (See Section 22-049.52.)
- (f) The county, when required, does not make a position statement available to the claimant at least two working days prior to the date of the scheduled hearing, or the county has modified the position statement (as defined in Section 22-073.253) after providing the statement to the claimant, and the claimant has waived decision deadlines contained in Section 22-060.

(§ 22-053.113.)

Exhibit 0003

Good cause means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. (Welfare and Institutions Code (Welf. & Inst. Code), § 10951 subd. (b)(2).)

IHSS

Under state law, the purpose of the IHSS Program is to provide those supportive services to Aged, Blind and Disabled (ABD) persons who are unable to perform the services themselves and "who cannot safely remain in their homes or abodes of their own choosing unless these services are provided." (Welf. & Inst. Code § 12300 subd. (a).)

Own home means the place in which an individual chooses to reside. (§ 30-701(o)(2).)

The applicant/recipient, his/her conservator, or in the case of a minor, his/her parents or guardian shall be responsible for reporting all known facts which are material to his/her eligibility and level of need. (§ 30-760.14.)

Counties are responsible for informing recipients of their rights and responsibilities in relation to eligibility and need for services. (§ 30-760.21.)

Counties are responsible for correctly determining eligibility and need. (§ 30-760.24.)

County services staff shall conduct a needs assessment of applicants and recipients of IHSS. In making this assessment, the services staff shall determine the total amount of hours per week needed for the various services set forth in the program content. (§ 30-763.2.)

Burden of Proof at Hearing

In administrative tribunals, the party asserting the affirmative of the issue generally has the burden of proof. (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 273 P.2d 572; and California Administrative Agency Practice, California Continuing Education of the Bar (1970) p.183.)

The burden of producing evidence is the obligation of a party to produce evidence sufficient to avoid a ruling against him on the issue. (Evidence Code (Evid.), § 110.) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact. (Evid. Code, § 550.)

The burden of proof is the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

CONCLUSION

Jurisdiction

Based on the above-cited regulations, a hearing request must be dismissed by written decision if it is abandoned.

The claimant requested the present state hearing to dispute the county action discontinuing his IHSS benefits effective October 10, 2017. The claimant filed a prior hearing request on November 7, 2017, regarding the identical issue. A hearing was scheduled for March 15, 2018.

As the claimant did not attend the scheduled hearing on March 15, 2018, the claimant's November 7, 2017 hearing request was considered abandoned and a written decision in State Hearing Decision Number 17311249, adopted on March 19, 2018, was issued dismissing the claim.

After the receiving the dismissal decision, the claimant filed another hearing request on March 28, 2018, regarding the identical issue. A hearing was scheduled for April 26, 2018. As the claimant did not attend the scheduled hearing on April 26, 2018, the claimant's March 28, 2018 hearing request was considered abandoned and a written decision in State Hearing Decision Number 180890012, adopted on May 1, 2018, was issued dismissing the claim.

Based on the above-cited regulations, a hearing request shall be dismissed when the identical issue that the claimant is protesting has already been the subject of a previous state hearing involving the claimant. Individuals who do not appear at their scheduled hearings have the right to request the dismissal decision be set aside and have a new hearing if good cause is established for not attending the hearing. Such request must be made within 15 days of the date the dismissal decision is received. Good cause as a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. Sudden and unexpected emergencies that prevent the claimant from appearing is considered good cause.

The claimant filed his March 28, 2018 hearing request within 15 days of the dismissal decision adopted on March 19, 2018. The claimant filed his April 30, 2018 hearing request within 15 days of the dismissal decision adopted on May 1, 2018. Therefore, the claimant made timely requests to set aside the dismissals.

The claimant testified that on March 12, 2018, his wife was told that she needed to see a specialist for an eye condition. He further testified that he did not appear for the March 15, 2018 hearing because he had to take his wife to the hospital. He also testified that he was concerned that his wife would be blind. The claimant submitted into the record a Consultation Report dated March 12, 2018, which shows that the claimant was diagnosed with an eye condition and was referred to a retina specialist. The claimant also submitted into the record a March 15, 2018 medical record showing that the claimant's wife received emergency care for retinal detachment.

The county representative submitted into the record the following written response, which states the following in pertinent part:

Regarding the missed hearing on 03/15/2018 due to the doctor visit. The claimant should have contacted the State to let them know that he was not able to come to the hearing as soon as he knew he would not be available, or at least, when they got home from the doctor.

Based on the claimant's testimony and the documentary evidence he submitted, it is determined that the claimant had a sudden and unexpected emergency that prevented the claimant from appearing at the March 15, 2018 hearing. Accordingly, the claimant has established good case for the nonappearance.

The claimant testified that he did not attend the April 26, 2018 hearing because his wife had a follow up medical appointment for her eye condition. The claimant submitted into the record an additional written response regarding the reason for not attending the April 26, 2018 hearing at 1:00 p.m., which indicates the following:

I discovered that I had a hearing on April 26, 2018 while at [hospital name redacted] that my wife had. Yes, that is correct[.] I discovered of the hearing date of April 26, 2018, on April 26, 2018.

Based on the claimant's testimony that he discovered that he had a hearing on the same day of the April 26, 2018 hearing and on evidence that the claimant was at a medical appointment with his wife on that day, it is determined that the claimant had a compelling reason beyond the claimant's control for filing for a not appearing at the April 26, 2018 hearing. Accordingly, the claimant has established good case for the nonappearance.

IHSS Discontinuance

Based on the above-cited regulations, an IHSS recipient is responsible for reporting all known facts, which are material to his or her eligibility and level of need. Counties are responsible for informing recipients of their rights and responsibilities in relation to eligibility and need for services and for correctly determining eligibility and need.

In this case, the county discontinued the claimant's IHSS benefits effective October 10, 2017, because the claimant did not tell the county where he was currently living. It was found, however, that the claimant did not fail to provide an address to the county prior to the county discontinuing his IHSS benefits effective October 10, 2017. The county representative contended that the county correctly discontinued the claimant's IHSS benefits because the claimant reported that the claimant was homeless, and the address of the campground the claimant provided was not complete because there are over a thousand campsites there. The county representative further contended that for IHSS purposes, the claimant would not be eligible to IHSS while homeless. While the county representative's contentions may be correct, the basis for the discontinuance was not because the claimant was not living in a "home" for IHSS purposes. Based on the finding of fact, it is determined that the county has not met its burden of proving that the claimant's IHSS benefits should be discontinued. Accordingly, the county action discontinuing the claimant's IHSS benefits effective October 10, 2017, is not sustained.

ORDER

The claim is granted.

Los Angeles County shall rescind the discontinuance of the claimant's IHSS benefits effective October 10, 2017, aid the claimant as otherwise eligible, and notify the claimant in writing of the actions taken.

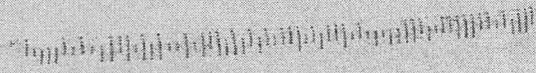
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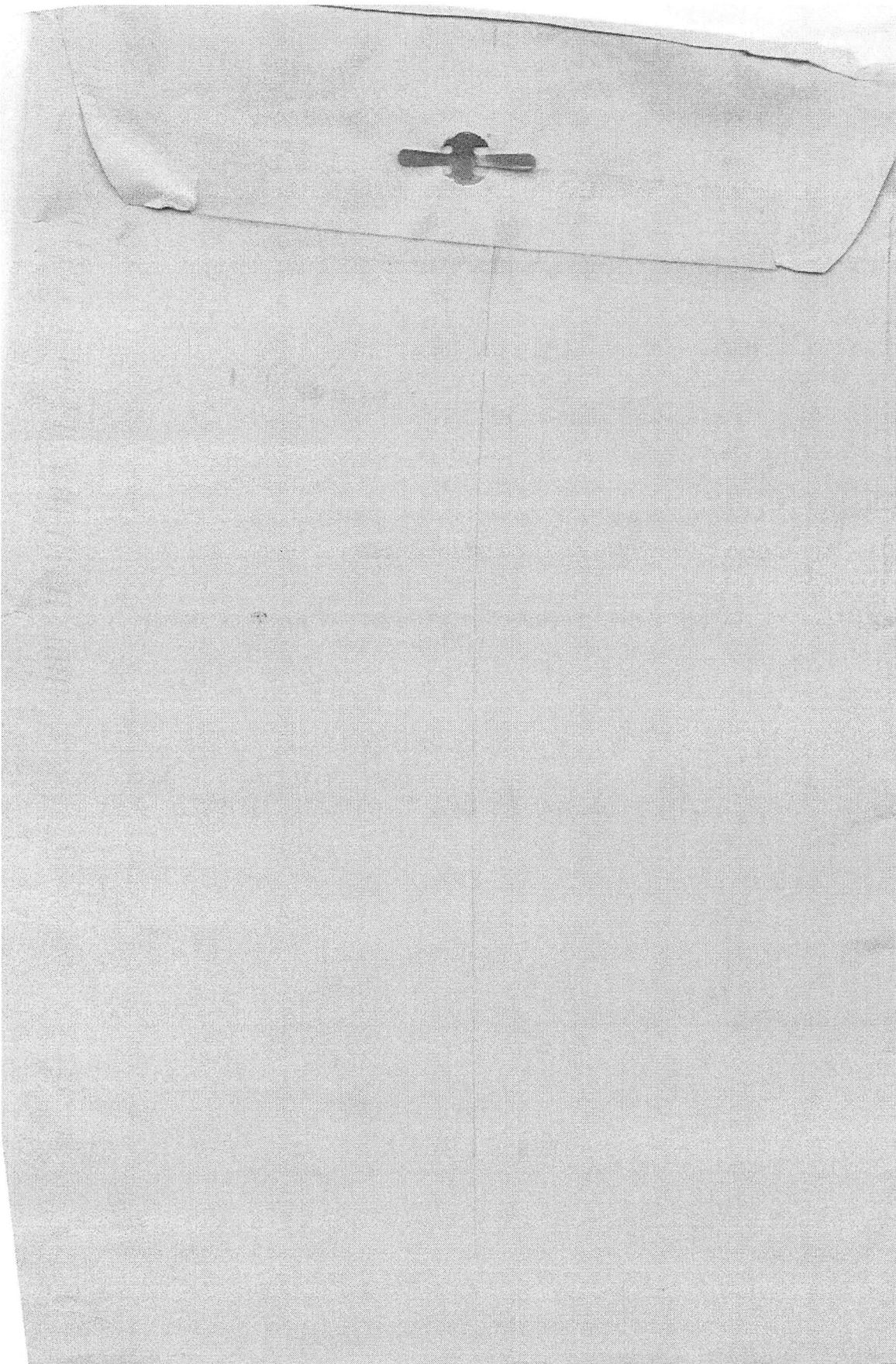


Exhibit 0003