

continuing hand complaints in spite of treatment.” Selection Services denied the appellant’s request.

On appeal, the appellant presents that she had a pre-existing serious illness and disability on the test date and submits a June 20, 2012 doctor’s note that states she has osteoarthritis of multiple joints, an August 26, 2014 letter from the Social Security Administration approving disability benefits retroactive to February 12, 2013, and an October 16, 2014 letter from the State approving Medicaid benefits. The appellant explains that on October 14, 2014 she sent Selection Services a fax which consisted of 13 pages and 10 enclosures, and another fax on October 23, 2104 which consisted of four pages with two enclosures requesting either a make-up or permission to complete the remaining questions that she did not answer due to the numbness in her hands. She also requested to be categorized as “DISABLE for this and future eligibility list of CSC.” The appellant emphasizes that due to her osteoarthritis, her writing is slow and she is unable to complete the written exam in the time given. As such, she requests to be given sufficient time to either re-take the subject examination or complete her unfinished examination.

In a supplemental submission, the appellant states that she thought her two prior fax submissions to Selection Services in support of her request for an accommodation were self-explanatory and that after she received the accommodation approval letter, she spoke to the ADA Coordinator who advised that the Test Center Supervisor has been instructed to take care of all her accommodation requirements, including the use of an elevator to go to the second floor of the building. The appellant underscores that her exposure to the examination materials should not impact her request as she immediately appealed the matter within five days of the examination and before the subject eligibility list was promulgated. Further, she maintains that the test monitor at the examination site observed that she was frequently taking rests by putting her pencil down and leaving aside her test paper and answer sheet.

CONCLUSION

N.J.A.C. 4A:4-2.9(a) provides that make-up examinations, except for professional level engineering promotional examinations and public safety open competitive and promotional examinations, may be authorized for the following reasons:

1. Error by Civil Service Commission (Commission) or the appointing authority;
2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor’s certificate specifying

that the candidate was not able to take the test on that day for medical reasons;

3. Documented serious illness or death in the candidate's immediate family;
4. Natural disaster;
5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and
6. Other valid reasons.

N.J.A.C. 4A:4-2.14 provides that otherwise qualified applicants with disabilities may request an accommodation by indicating their request for an accommodation on the examination application and, upon receipt, this agency shall make a reasonable accommodation where appropriate and notify the candidate of the arrangements.

N.J.A.C. 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In the present matter, the record demonstrates that the appellant has not met her burden of proof. Under *N.J.A.C.* 4A:4-2.14, if the appellant needed an accommodation due to a disability, she needed to make this request at the time she submitted her application so that Selection Services could verify the need for the accommodation and make appropriate arrangements for the accommodation. In *In the Matter of Leonard S. Cohen*, Docket No. A-5189-99T5 (App. Div. September 25, 2001), the appellant did not request an accommodation on his application and alleged he raised the issue of his need for an accommodation at the test center on the day of the examination, but was refused. The court determined, even assuming that he did raise the issue, it was not unfair to deny the appellant a make-up examination. The court reasoned that had he regarded his back problem as a disability, he would have so indicated on his application. In this matter, the appellant waited until October 14, 2014, only several days prior to the October 18, 2014 test administration date, to request an accommodation. Further, the accommodation that she requested was only that the test be accessible to a candidate using a walker. Despite the short notice, since this accommodation was not difficult for Selection Services to provide, it granted this request.

The appellant participated in the subject examination and subsequently requested that she either be allowed to re-take the examination or finish the examination due to her disability. However, it cannot be ignored that the appellant


did not raise the issue of her additional needs at the test center. *N.J.A.C. 4A:4-6.4(c)* states that an examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing at the examination site on the day of the examination. Since the appellant's appeal pertaining to this test administration issue was not submitted on the night of test administration, her appeal regarding this issue is untimely. In this regard, it is noted that all candidates for examinations are provided with an informational flyer called "Exam Review and Appeal Procedures for Multiple-Choice Examinations" at the examination center that specifically informs them that objections to the manner in which the examination was conducted must be made in writing on a form provided at the test center. In *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003), the court noted that "the obvious intent of this 'same-day' appeal process is to immediately identify, address and remedy any deficiencies in the manner in which the competitive examination is being administered." In this case, the appellant did not raise her need for additional accommodations on the night of the examination which precluded the Test Center Supervisor from addressing her concerns and potentially providing her with a remedy before she was exposed to the test materials. In this regard, as the appellant was exposed to the exam, it would be unfair to other candidates to allow her to take her examination again. See *In the Matter of Linda M. Nasuti* (MSB, decided May 9, 2000). As such, there is no remedy that the Commission can provide the appellant.

ORDER

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF APRIL, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

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