



receive an accommodation prior to taking the BICAT examination, but he did not get an answer until after it was administered.

A review of Test Administration records reveals that the appellant did not indicate that he needed an accommodation on his original application nor is there a record that the appellant called requesting an accommodation. Moreover, there is no record that the appellant requested an accommodation at the test site. Additionally, all candidates were advised prior to taking the BICAT examination that a test administration appeal needed to be filed at the test site on the day of the examination. However, the appellant did not file such an appeal.

### CONCLUSION

*N.J.A.C.* 4A:4-2.14(a) 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:4-6.4(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.

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

It is noted that the test proctor advised the appellant at the examination center 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." A review of the record indicates that appellant took the subject examination on August 12, 2015. In a letter post-marked August 27, 2015, fifteen days after the examination date, he filed his appeal. Under these circumstances, his appeal of examination administration is clearly untimely. However, the following is provided for informational purposes only.

Under *N.J.A.C.* 4A:4-2.14, if the appellant needed an accommodation due to a disability, he needed to make this request at the time he submitted his application so that Test Administration could verify the need for the accommodation and make appropriate arrangements for the accommodation. It is also noted that the appellant did take and pass the Investigator examination, which was a multiple-

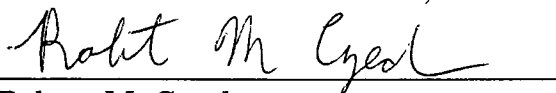
choice examination, without an accommodation. Additionally, even if the appellant did in fact call Test Administration prior to taking the BICAT examination and failed to receive a timely call back, the appellant did not raise his need for an accommodation at the test site, which precluded the test proctor from addressing his concerns and potentially providing him with a remedy before he 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 him to take the examination again. See *In the Matter of Paul Devaney* (MSB, decided December 7, 2005), (Appellant who was not contacted regarding his request for accommodation, but participated in the examination, never raised the issue of his need for an accommodation at the test center nor filed an appeal at the test center not entitled to a make-up). 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 7<sup>th</sup> DAY OF OCTOBER, 2015



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