

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-17094

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 12, 2007

Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's State Disability Assistance (SDA) application at review?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Due to a prior DHS ALJ decision in May, 2006, claimant was approved SDA.

Claimant's case was scheduled for review, at issue herein.

(2) Claimant case was scheduled for review in March, 2007. At that time, the department took a new MA-P application, also at issue herein.

(3) On 5/10/07, the MRT denied MA-P and continuing SDA eligibility.

(4) On 5/11/07, the DHS issued notice.

(5) On 5/23/07, claimant filed a hearing request.

(6) Claimant has been denied SSI by the Social Security Administration (SSA).

Claimant testified that she has had a number of different applications over the years for SSI with SSA and has never been approved. Claimant testified that she is alleging the same impairments as the previous application to the DHS application herein. Claimant has had a final determination by SSA. None of the exceptions apply.

(7) On 8/10/07, the State Hearing Review Team (SHRT) denied claimant. The record was held open on behalf of claimant to establish good cause due to a failure of claimant to attend a scheduled assessment requested by the DHS. No documentation was forwarded or verified to the undersigned Administrative Law Judge and no appointment test results were obtained due to claimant failing to participate in an evaluation previously scheduled. After instructions from the local office, the undersigned Administrative Law Judge closed the record.

(8) The undersigned Administrative Law Judge was on an extended leave from 8/1/08, returning full time 2/1/09. None of the ALJ's pending cases were reassigned while on leave; no protected time afforded before or after leave for issuing decisions.

(9) As of the date of application, claimant was a 55-year-old female standing 5' 6" tall and weighing 160 pounds. Claimant's BMI Index is 25.8, classifying her in the overweight range. Claimant has a GED education.

(10) Claimant does not currently have an alcohol abuse problem but she testified she has a history. Claimant has no drug abuse problem or history. Claimant smokes approximately one pack of cigarettes per day. Claimant has a nicotine addiction.

(11) Claimant does not have a driver's license due to previous DUIs.

(12) Claimant is not currently working. Claimant last worked in 1998. Claimant's work history is unskilled.

(13) Claimant alleges continuing eligibility on the basis of seizures.

(14) The August 15, 2007 SHRT decision is adopted and incorporated by reference herein. SHRT denied due to insufficient information. The department subsequently scheduled claimant for a neurological assessment prior to the administrative hearing for which claimant did not show but argued good cause. At the administrative hearing, claimant was given an opportunity to comply with the department's request. No new medical was forwarded to the undersigned Administrative Law Judge. The local office indicated that claimant had an opportunity to provide missing records but failed to provide those records to the department.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-

400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specific considerations are required at review. These considerations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...You must provide us with reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled.... You must have a good reason for not giving us this information or we may find that your disability has ended.... If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources.... 20 CFR 416.993(b).

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to

work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds improvement, as related to claimant's ability to engage in work and work-like settings.

The remainder of the seven-step analysis involves the five sequential steps. However, claimant's file has been stalled with regards to the ability to make a full assessment on the grounds of insufficient information and claimant's failure to participate with the review standards. Moreover, there has been a final SSA determination.

With regards to insufficient information, this ALJ finds claimant ineligible pursuant to 20 CFR 416.918. With regards to the final SSA determination, policy states in part:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**

- .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

Relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until the determination is changed by the SSA." 42 CFR 435.541(a)(b)(i). These regulations further provide: "If the SSA determination is changed, the new determination is also binding on the agency." 42 CFR 435.541(a)(b)(ii).

In this case, there is apparently no dispute relative to the facts. Claimant's claim was considered by SSA and benefits denied. The determination was final. Claimant is alleging the same impairments. None of the exceptions apply.

For these reasons, under the above-cited policy and federal law, this Administrative Law Judge has no jurisdiction to proceed with a substantive review. The department's denial must be upheld.

As noted above, should the SSA change its determination, then the new determination would also be binding on the DHS.

In the alternative, it is noted that claimant is denied on the basis of the findings and conclusions of the SHRT decision adopted and incorporated by reference herein.

It is further noted that in reaching the conclusions herein, the undersigned Administrative Law Judge was required to find ineligibility in the alternative pursuant to 20 CFR 416.918.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's denial of claimant's MA-P application and continuing SDA eligibility were correct.

Accordingly, the department's determination on both matters is UPHELD.

_____/s/
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 10, 2010

Date Mailed: February 10, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JS/cv

cc:

