

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: 2007-23238
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 27, 2008
Muskegon 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, an in-person hearing was held in Muskegon County in Muskegon, Michigan. Claimant was represented by [REDACTED]

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) application?

FINDINGS OF FACT

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

- (1) On 4/12/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for two months of retro MA.
- (3) On 5/29/07, the MRT denied.
- (4) On 6/4/07, the DHS issued notice.

(5) On 6/22/07, claimant filed a hearing request.

(6) Claimant testified at the administrative hearing that an SSI application was pending with SSA and that claimant had an administrative hearing pending for an ALJ.

Claimant's application was in August, 2007. There is no evidence to indicate that claimant is alleging any of the exceptions under the federal jurisdictional requirements found at 42 CFR 435.541.

(7) The undersigned Administrative Law Judge was on a scheduled extended leave of absence from August 1, 2008, returning full time on February 1, 2009.

(8) On 5/11/2009, the undersigned Administrative Law Judge received an updated SOLQ from the local office indicating that claimant currently has an SSI application with an application date of 6/17/2008. Claimant has received a final determination from his 2007 application which was filed shortly after his application with the DHS. None of the exceptions apply.

(9) On 10/2/2007, the State Hearing Review Team (SHRT) denied claimant. That decision is adopted and incorporated by reference herein.

(10) As of the date of application, claimant was a 47-year-old male standing 5' 9" tall and weighing 140 pounds. Claimant has a GED.

(11) Claimant testified that he does not have an alcohol problem. Evidence in the medical record indicates that claimant uses marijuana on a daily basis. Claimant testified at the administrative hearing that he had ceased consuming marijuana approximately two months prior to the administrative hearing. Claimant has a pack-a-day history of smoking "most of life." Claimant has a nicotine addiction.

(12) Claimant does not have a driver's license.

(13) Claimant is not currently working. Claimant testified that he last worked in 2005 in assembly work. Claimant has also worked as a custodian. Claimant's work history is unskilled.

(14) Claimant alleges disability on the basis of high cholesterol, high blood pressure, seizures, back pain.

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.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy states:

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, claimant testified at the administrative hearing that he was waiting for a hearing before an administrative law judge. Claimant's application was filed four months after his application with the Michigan DHS. There is no evidence on the record to indicate that claimant is alleging different impairments or that any 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 in the Findings of Fact, claimant has reapplied for SSI with SSA with a new application date of 6/17/2008 pursuant to an SOLQ report run on 5/11/2009. Should the SSA reverse its prior denial, then that new decision would be binding on the State department.

It is noted in the alternative that should the sequential analysis be applied, this Administrative Law Judge concurs with the SHRT decision finding no statutory disability on the basis of Medical Vocational Grid Rule 203.28 as a guide. Statutory disability is not shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/

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

Date Signed: May 20, 2009

Date Mailed: May 22, 2009

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:

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