

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No: 2007-20463

Issue No: 2009; 4031

Case No:



Load No:

Hearing Date:

January 9, 2008

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. 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 on January 9, 2008.

ISSUES

(1) Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) application of January 22, 2007?

(2) Did the DHS properly close claimant's SDA due to claimant no longer having an active case with MRS?

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 1/22/07, claimant applied for MA-P with the Michigan DHS. Claimant did not apply for retro MA.

(2) Claimant previously had an open SDA case since March of 2004 based upon an active case with MRS. In August 2007, the DHS was informed that claimant was not receiving services with MRS, refused to cooperate with his plan, failed to show for most appointments, and requested in February of 2007 that his case close. Claimant later requested to have it reopened. On 11/8/07, MRS informed the department that claimant was still in a non-active status.

(3) On 6/16/07, the MRT denied.

(4) On 6/20/07, the DHS issued notice that claimant was denied MA-P by MRT and that claimant was no longer eligible for SDA based upon MRS status.

(5) On 7/25/07, claimant filed a hearing request. The SDA closure took place.

(6) Claimant testified under oath that he has had three denials for SSI with the SSA. Claimant further testified that he is alleging the same impairments.

(7) On 10/11/07, the State Hearings Review Team (SHRT) denied claimant.

(8) As of the date of application/review, claimant was a 52-year-old male standing 5' 10" tall and weighing 210 pounds. Claimant has a GED.

(9) Claimant testified that he does not smoke.

(10) Claimant testified that he does not have an alcohol/drug abuse problem or history.

(11) Claimant has a driver's license and can drive a motor vehicle.

(12) Claimant is not currently working. Claimant last worked approximately 10 years ago. Claimant's work history is working as a bus driver.

(13) Claimant alleges disability on the basis of spinal nerve root compression, pain in the left shoulder, right elbow and left knee.

(14) The SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

On 2/07, claimant's treating physician reports that neck had full range of motion. Shoulders had good flexion/extension and abduction/adduction. Strength was 5/5. Sensation intact. No neurological symptoms found on exam. Exhibits 11, 14, 22, 27. Denied due to lack of severity.

(15) In 1999, claimant underwent corrective posterior foraminotomy and interior cervical discectomy at C6-5, secondary to a work-related injury at [REDACTED] in 1997.

(16) Surgical follow-up consultation pursuant to the 1999 surgery, dated November 17, 1999, indicates wound healing nicely and pain gone.

(17) A September 1, 2005 MRI follow-up of the cervical spine reveals mild to moderate right foraminal stenosis at C5-6 and C6-7, with mild to moderate left foraminal stenosis at C7-T1.

(18) A September 28, 2006, clinical note indicates cervical pain while controlled on Vicodin.

(19) A July 5, 2007 clinical record notes full range of motion in the cervical spine and shoulders without discomfort. Grip strength 5/5.

(20) Claimant is fully independent in self care and has a valid driver's license.

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

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 with regards to this issue, 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)(2)(b)(i). These regulations further provide: “If the SSA determination is changed, the new determination is binding on the State department.” 42 CFR 435.541(a)(2)(b)(ii).

In this case, there is no relative dispute as to the facts. Claimant testified that he was denied by SSA for SSI on three different occasions. Claimant received a final determination. Claimant testified that he is alleging the same impairments. Under the above-cited State policy and federal authority, there is no jurisdiction for this Administrative Law Judge to proceed with a substantive review. Thus, the department’s actions must be upheld.

It is noted that should the sequential analysis be applied, relevant federal regulations state in part:

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant’s claims or claimant’s physicians’ statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and

- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). As noted, SHRT denied claimant at Step 2. This Administrative Law Judge concurs with SHRT and finds that claimant does not allege or bring forth sufficient medical documentation which meets the requirements under the federal law to show with sufficient medical documentation a severe impairment. 20 CFR 416.913(b), .913(d), and .913(e). Claimant's complaints of his symptoms are not corroborated to the extent that they rise to statutory disability as defined under the law pursuant to 20 CFR 416.927(a)(1).

With regards to claimant's SDA, automatic eligibility only exists where an individual has an active MRS case. See PEM Item 261. As claimant's case is no longer active, the department is and was required to close claimant's case. See PEM Item 261. As already noted, claimant does not meet statutory disability in the alternative and thus, the department's closure of claimant's SDA was correct and is hereby upheld.

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 closure of claimant's SDA was correct.

Accordingly, the department's denial of claimant's MA-P application and closure of claimant's SDA is hereby UPHELD.

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

Date Signed: April 6, 2009

Date Mailed: April 7, 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.

JGS/cv

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