

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: 2007-22951

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 11, 2007

Saginaw 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 on December 11, 2007.

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 6/12/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 7/19/07, the MRT denied.
- (4) On 7/24/07, the DHS issued notice.

(5) On 8/7/07, claimant filed a hearing request.

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

Claimant has had a final determination by SSA. None of the exceptions apply. Verification by way of an SOLQ received on 12/11/07, and subsequently on 7/22/08, indicates that claimant received a final determination for SSI by SSA on 9/20/07 on the basis of N35--lacks duration. Claimant testified at the administrative hearing that he had no intention of appealing.

(7) On 11/9/07 the State Hearing Review Team (SHRT) denied claimant. Pursuant to claimant's request to hold the record open for the submission of new and additional medical documentation, on 4/15/08 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 46-year-old male standing 5' 11" tall and weighing 195 pounds. Claimant's BMI is 27.2, classifying claimant as overweight under the BMI Index. Claimant has two years of college education.

(9) Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes approximately one pack of cigarettes every three days. He has a nicotine addiction.

(10) Claimant testified that he does not have a driver's license due to it being revoked for failure to pay child support.

(11) Claimant is not currently working. Claimant last worked in 2005. Claimant testified that he did in fact work between 2005 and 2007 on a cash basis.

(12) Claimant alleges disability on the basis of a lacerated tendon, artery and nerves.

(13) The SHRT findings and conclusions of its 11/9/07 decision are adopted and incorporated by reference herein. Claimant was denied for the same reason as Social Security--no duration per 20 CFR 416.909.

(14) The subsequent 4/15/08 SHRT decision is adopted and incorporated by reference herein. SHRT denied on the basis of Medical-Vocational Grid Rules 202.20 and 201.21 as guides.

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, there is 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. Moreover, claimant testified at the administrative hearing that he had no intention to appeal.

It is noted that both SHRT and SSA denied pursuant to the first SHRT decision on the basis of 20 CFR 416.909--duration.

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.

It is noted that should claimant reapply and be approved by SSA, then that new determination would be binding on the State department.

It is further noted in the alternative that on the basis of the new medical, claimant would be denied on the basis of the decision set forth in the 4/15/08 SHRT decision--Medical-Vocational Grid Rules 202.20 and 201.21 as guides.

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: June 23, 2009

Date Mailed: June 25, 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:

