

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: 2008-2885
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 6, 2008
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 three-way telephone hearing was held with claimant appearing from home by conference telephone.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) 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 2/27/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 6/15/07, the MRT approved SDA and denied MA-P. A payee was recommended due to substance abuse.

- (4) On 6/25/07, the DHS issued notice.
- (5) On 9/17/07, 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.

(7) On 1/10/08, 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 6/30/08 SHRT once again denied claimant. Both of those decisions are adopted and incorporated by reference herein.

(8) The undersigned Administrative Law Judge was on a scheduled leave of absence 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 27-year-old female standing 5' 4" tall and weighing 155 pounds.

(10) Claimant testified at the administrative hearing that she does not have an alcohol problem or history and does not have a drug problem, but did have a cocaine abuse history. Claimant testified that she was in rehab in 2005. Evidence includes repeated requests for narcotics (Exhibit 6), nicotine addiction, reports of occasional marijuana use, suspect drug-seeking behavior (Exhibit 29). Claimant reports smoking a pack of cigarettes per day. Claimant has a nicotine addiction.

(11) Claimant does not have a driver's license due to "did not pay tickets."

(12) Claimant reported at the administrative hearing that she is not currently working and that her work history is unskilled. Claimant has a 12th grade education.

(13) Claimant alleges disability on the basis of depression, anxiety, brain tumor.

(14) A DHS-49 completed 12/10/07 reports a diagnosis of anxiety, brain tumor, severe headaches. The physician notes that claimant can engage in work and that claimant can stand and/or walk at least 2 hours or of an 8-hour workday; claimant can sit for about 6 hours out of an 8-hour workday. Claimant has no restrictions regarding hands/arms or feet/legs as to simple grasping, reaching, pushing/pulling, fine manipulation. Claimant has sustained concentration limitations but otherwise her mental evaluation was normal. Claimant's entire examination areas under general, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, and neurological were normal. Under the mental assessment, the physician notes "anxiety at times." See Exhibits 39 and 40.

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 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.

It is noted that claimant indicated at the administrative hearing that she has a new alleged impairment of a brain tumor and that this should be controlling with regards to the assessment and the connection between alleged impairments and her SSA application. However, claimant's DHS-49 completed with the brain tumor as part of the diagnosis still indicates that claimant is capable of working and engaging in work-like settings. 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: January 22, 2010

Date Mailed: January 25, 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:

