

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: 2009-10303
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Montcalm 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 on March 25, 2009.

ISSUE

Is claimant eligible for three months of retro MA--June, July and August, 2008?

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 9/12/08, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA--June, July and August, 2008.
- (3) On 11/10/08, the MRT denied.
- (4) On 11/17/08, the DHS issued notice.
- (5) On 12/3/08, claimant filed a hearing request.

(6) On December 12, 2008, Richard Stilson FIM with the Montcalm DHS prepared a hearing packet and forwarded it to Administrative Hearings and Rules.

(7) On 2/17/09, the local office faxed a document to SOAHR. The document is page 1 of a 2-page letter claimant received from SSA. The letter indicates that claimant was approved RSDI with payments beginning February, 2009. Claimant Exhibit A. The bottom of the page states "see next page." The county did not fax the entire document or the 'next page.'

(8) On 2/26/09, Manager Administrative Law Judge Martin D. Snider with SOAHR issued a Summary Disposition stating in part:

On February 13, 2009 the SSA found claimant eligible for RSDI effective 2009. The determination is binding on the department.... The department is hereby ordered to determine if petitioner is otherwise eligible... The department shall determine eligibility effective dates using the September 12, 2008 application date. However, a hearing will still be held to determine eligibility for the months of September 2008 through January 2009 for the retro MA program.... Exhibit 63.

(9) Contrary to the Summary Disposition, claimant's retro months are the three retro months prior to his September 2008 application--June, July and August, 2008 (and not September, 2008 through January, 2009 indicated by Judge Snider).

(10) The only months left for substantive review herein by the undersigned Administrative Law Judge are the three retro months--June, July and August, 2008.

(11) Claimant was in a motor vehicle accident on Labor Day 2008. Prior to that time, claimant worked full time for \$11.00 an hour in production work. Claimant had been employed in this job since 2006. Claimant's status in all applicable retro months constitutes substantial gainful activity.

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.

These federal guidelines 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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

Claimant's disability was the result of a motor vehicle accident (MVA) which claimant was involved in on 9/1/2008. Claimant argues at the administrative hearing that he should be found disabled in the retro months as the MVA was a result of a seizure which claimant has had since he was 2 years old.

Unrefuted evidence on the record is that in the three retro months at issue herein, claimant was in fact working. Claimant worked full time in production work. Claimant earned \$11.00 an hour. Claimant earned over \$22,000 per year. Under the federal guidelines, claimant's activity constitute substantial gainful activity. The law does not recognize a disabling impairment as statutorily disabling when and where the applicant was engaged in substantial gainful activity. Thus, there is no eligibility pursuant to Step 1 of the sequential analysis for the three retro MA months. See 20 CFR 416.920(b).

With regards to Judge Snider's Summary Disposition, Judge Snider identified the wrong disability onset date. Judge Snider's Summary Disposition states that claimant's disability onset date was February, 2009. However, the SOLQ which the department did not fax to Judge Snider actually shows claimant's disability onset date was identified by the SSA as September, 2008. An individual has a six-month waiting period generally for RSDI claims where there must be no income. However, this will not negate the disability onset date which the DHS uses for eligibility for MA. This policy is found in PEM Item 260:

Eligible for RSDI: A person eligible for RSDI benefits based on his disability or blindness meets the disability or blindness criteria. Disability or blindness starts from the RSDI disability onset date established by the SSA. This includes a person ... No other evidence is required. PEM Item 260, p. 1.

The SOLQ shows claimant's disability onset date to be September 1, 2008.

Thus, there is no substantive review which the undersigned Administrative Law Judge must review for any months from September, 2008 forward. Social Security has identified that claimant meets the disability/medical criteria.

It is noted that this decision does not make any findings with regards to financial eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides:

- (1) The only substantive review in this decision is with regards to claimant's three months of retro MA--June, July and August, 2008.
- (2) Claimant is not eligible for any of the three retro MA months as claimant was engaged in SGA and thus, this portion of the department's denial is **PARTIALLY AFFIRMED**.
- (3) Claimant is eligible for MA from September, 2008 forward if he meets the non-medical MA and SDA criteria.

The department is **ORDERED** to review this case in accordance with its usual policy and procedure.

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

Date Signed: April 27, 2009

Date Mailed: April 27, 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:

