

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2009-34716 REHD
DHS Reg. No. 2009-34486


Claimant

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Reconsideration granted on December 15, 2009.

ISSUE

Did the Administrative Law Judge (ALJ) properly determine that the Claimant was not disabled and ineligible for Medical Assistance based on disability (MA-P) and Retroactive Medical Assistance and State Disability Assistance (SDA)?

CONCLUSIONS OF FACT

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

1. On November 19, 2006, Claimant applied for MA-P, SDA, and retro MA-P, benefits.
2. On March 1, 2007, the Department of Human Services (DHS) Medical Review Team (MRT) determined that Claimant was not disabled and was ineligible for benefits.
3. On March 19, 2007, received the Claimant's request for hearing in which he contested the DHS denial of benefits.
4. On June 4, 2007, the State Hearing Review Team (SHRT) determined that Claimant was not disabled and was ineligible for benefits.
5. On August 3, 2009, Administrative Law Judge (ALJ) Jay Sexton issued a Hearing Decision which affirmed the DHS determination that the Claimant was not disabled and the DHS denial of benefits.

6. On September 1, 2009, DHS received the Claimant's request for Rehearing/Reconsideration. On September 9, 2009, the State Office of Administrative Hearings and Rules (SOAHR) received the Claimant's request for Rehearing/Reconsideration.
7. On December 15, 2009, SOAHR granted the Claimant's request and issued an Order of Reconsideration.
8. On May 16, 2008, a Social Security Administration (SSA) ALJ issued a decision which notified the Claimant that SSA had determined that Claimant was disabled effective January 21, 2003.

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).

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education, and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings, which demonstrate a medical impairment...20 CFR 416.929(a).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)...20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers, and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The Residual Functional Capacity (RFC) is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements, and other functions will be evaluated...20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor...20 CFR 416.967.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

A statement by a medical source finding that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability...20 CFR 416.994(b)(4)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source’s statement of disability...20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

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1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

DHS policy at BEM 150 and BEM 260 provides that a Social Security Administration determination (SSA) that an applicant is disabled is binding on DHS. On May 18, 2008, SSA sent the Claimant written notice that SSA determined that the Claimant was disabled effective January 21, 2003. The SSA disability determination is binding on DHS and vacates the March 1, 2007, DHS MRT determination and the June 4, 2007, SHRT determination that the Claimant was not disabled.

Because of the SSA has issued a binding determination that the Claimant is disabled, and because the SSA determined that the Claimant's disability onset date is more than three months before the Claimant's November 19, 2006 Medicaid application, this Administrative Law Judge has no jurisdiction to consider the Claimant's disability and I must vacate and reverse ALJ Sexton's August 2009, Hearing Decision. Therefore, pursuant to the SSA determination the Claimant is disabled, effective January 21, 2003.

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DECISION AND ORDER

This Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Social Security Administration determined that the Claimant was disabled effective January, 2003. The Administrative Law Judge's August 2009 Hearing Decision is REVERSED.

IT IS THEREFORE ORDERED:

The Department of Human Services, if it already has not done so, is ORDERED to determine that Claimant's non-medical eligibility for all applicable benefits, including retroactive benefits using the Claimant's November 2006 application date.

/s/

Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: December 21, 2009
Date Mailed: December 21, 2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.