

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: 2009-3546
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 2009
Ottawa 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, a telephone conference hearing was held on February 24, 2009.

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 6/18/08, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 9/10/08, the MRT denied.
- (4) On 9/22/08, the DHS issued notice.
- (5) On 10/10/08, claimant filed a hearing request.

(6) Claimant testified under oath that she has an SSI application pending with the Social Security Administration (SSA). Contrary verification obtained by the department on 7/8/2008 as well as on the date of the administrative hearing indicates that claimant applied for SSI on 8/10/2007 and was denied on 8/10/2007. Claimant did not file an appeal. Claimant testified at the administrative hearing that she is alleging the same impairments.

(7) On 11/10/08, the State Hearings Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 44-year-old female standing 5' 3" tall and weighing 210 pounds. Claimant's BMI is 37.2. Claimant has an 8th grade education.

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.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addition and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. Thus, obesity in-and-of itself is not sufficient to show statutory disability.

Prior to any substantive review, jurisdiction is must be established. Relevant policy and law as to jurisdictional issues applicable to the case herein state in part:

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 the department 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 also binding on the department.” 42 CFR 435.541(a)(2)(b)(ii).

In this case, there is no dispute relative to the facts. Claimant’s claim was considered by SSA and benefits were denied on October 10, 2007. See Exhibit 31. Claimant is alleging the same impairments. Claimant received a final determination from SSA. Claimant did not file a timely appeal and the disposition was final. Thus, under the above-cited policy and law, there is no jurisdiction for this Administrative Law Judge to proceed with a substantive review and thus, the department’s actions must be upheld.

It is noted that should claimant reapply for SSI with SSA, and should the SSA reverse its previous denial, then that new decision would be binding on the State agency.

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 decision is UPHELD.

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

Date Signed: February 26, 2009

Date Mailed: March 2, 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 [REDACTED]

cc: [REDACTED]