

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

SOAHR Docket No. 2009-7536 REHD
DHS Req. No: 2009-7221
Case No: [REDACTED]

[REDACTED]

Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Department.

ISSUE

Did the Administrative Law Judge err in his reversal of the Department of Human Services' denial of Claimant's application for Medical Assistance (MA)?

FINDINGS OF FACTS

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

1. On December 3, 2008, ALJ William A. Sundquist issued a Decision and Order in which reversed the DHS decision to deny Claimant's application and ordered the application processed.
2. On December 22, 2008, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services (DHS) received a Request for Rehearing/Reconsideration submitted by DHS.
3. On January 30, 2009, SOAHR granted the DHS's Request for Rehearing/Reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1-2 (the entire Findings of Fact) from the Hearing Decision, mailed on December 3, 2008, are not incorporated by reference.

5. On June 8, 2007, the Claimant, with the assistance of L & S, applied for Medicaid. (Application)
6. Claimant's application did not include sufficient medical documentation to prove disability.
7. On September 14, 2007, Claimant's application was deferred pending a medical verification appointment requested by the Medical Review Team (MRT). (Application correspondence p 8)
8. Claimant was sent notice of a medical appointment scheduled for [REDACTED], for purposes of medical verification. (Ex B1)
9. Claimant failed to attend the medical appointment scheduled for [REDACTED], [REDACTED]. (Ex A3)
10. On December 5, 2007, Claimant's application was denied because he failed to attend the required [REDACTED], medical appointment requested by MRT. (Ex A3)

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 Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105; MSA 16.490 (15). Agency 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 DHS (formerly Family Independence Agency or FIA) 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.

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.

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).

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

The following facts are undisputed: Claimant applied for MA with the assistance of L & S, the Medical Review Team (MRT) reviewed the Claimant's application and found that the medical documents he provided were not sufficient to establish a disability; Claimant's application was deferred pending a medical verification appointment requested by the MRT; Claimant was sent notice of a medical exam appointment scheduled for [REDACTED], for purposes of medical verification, Claimant failed to attend the [REDACTED], medical appointment; and Claimant's application was denied because he failed to attend the required [REDACTED], medical appointment.

L & S, acting as representative for Claimant, submitted a request for hearing based on the denial. ALJ Sundquist presided over the hearing and in his Hearing Decision framed the issue as, "Was noncompliance with verification requirements established?"

The ALJ cited Department policy found at PEM 260, pages three and four, and decided MRT should have denied Claimant's application if there was insufficient medical documentation instead of requesting a medical appointment. ALJ Sundquist's finding was a misapplication of federal regulation and Department policy. Contrary to ALJ Sundquist's finding, PEM 260, page four, directs a DHS worker to schedule a medical exam appointment when an applicant needs help obtaining the evidence needed to prove disability:

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the customer when they need your help to obtain it. Such help includes the following:

- Scheduling medical exam appointments
- Paying for medical evidence and medical transportation
See [PAM 815](#) and [PAM 825](#) for details.

A client who refuses or fails to submit to an exam necessary to determine disability or blindness **cannot** be determined disabled or blind and you should deny the application or close the case. It is not necessary to return the medical evidence to MRT for another decision in this instance.

PEM 260, 1-1-09, p. 4

It was clear error for ALJ Sundquist to determine that the DHS erred by scheduling a medical exam appointment instead of denying the application without an opportunity to provide additional evidence. It was erroneous for ALJ Sundquist to determine in his conclusions of law, "Claimant did not want to or was unable to obtain additional medical evidence." without substantial competent evidence in the record to support that finding.

It was further error for ALJ Sundquist to reverse the DHS action and order the Claimant's action to be processed because federal regulation and DHS policy prohibit the processing of an application that lacks medical evidence to prove disability. The DHS is bound by the federal regulation and DHS policy and cannot process an application that lacks medical evidence to prove disability. ALJ Sundquist is also bound by the federal regulation and DHS policy, lacks equitable jurisdiction, and is without authority to order DHS to process an application it is prohibited by regulation and policy from processing.

DHS acted in accordance with federal regulation and DHS policy to properly deny Claimant's application for failure to attend a medical exam appointment and failure to prove disability. The ALJ misapplied federal regulation and DHS policy when he reversed the DHS decision to deny Claimant's application and ordered the application processed.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge erred when he reversed the DHS decision to deny Claimant's application and ordered the application processed.

[REDACTED]
SOAHR Docket No. 2009-7536 REHD
DHS Reg No: 2009-7221
Reconsideration Decision

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision mailed December 3, 2008, is
REVERSED

/s/

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

cc:

[REDACTED]

Date Signed: 2/09/09
Date Mailed: 02/10/09

***** NOTICE *****

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