STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES
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IN THE MATTER OF:
[redacted], DHS Req. No: 2009-1052
Case No: [redacted]

Claimant
_____/

RECONSIDERATION DECISION

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

ISSUE

Did the Administrative Law Judge (ALJ) err in her denial of the Claimant's July 23, 2008, applications for Medical Assistance (MA-P),and Retroactive Medical Assistance ?

FINDINGS OF FACT

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

1. On June 22, 2009, Administrative Law Judge (ALJ) Jay Sexton issued a Decision and Order in which the ALJ affirmed the Department of Human Services' (DHS) denial of the Claimant's July 23, 2008, applications for Medical Assistance (MA-P),and Retroactive Medical Assistance.

2. On July 14, 2009, the State Office of Administrative Hearings and Rules, for the Department of Human Services on it's own motion issued a Notice of Reconsideration.

3. Findings of Fact 1 – 13, excluding Finding of Fact 1 and 12, from the Decision and Order mailed June 23, 2009, are hereby incorporated by reference.

4. On May 19, 2009, the State Hearing review Team (SHRT) issued a decision in which it approved the Claimant's applications for MA-P, and Retro MA-P. Retro MA-P was approved effective May 2008. SHRT did not recommend a medical review because the Claimant is deceased.

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 agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105; 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 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 activities 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. 20CFR 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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if

walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967 (a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls…20 CCR 416.9677 (b).

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 reflects 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 <u>not</u> required. These steps are:

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 sever 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).

The undisputed facts show that on July 23, 2008, the Claimant applied for MA-P, and Retro MA-P. On September 10, 2008, the DHS Medical Review Team (MRT) issued a decision in which it denied the Claimant's applications for MA-P, Retro MA-P, and SDA. On September 10, 2008, DHS sent the Claimant a notice that her applications for MA-P, and Retro MA-P were denied. On September 23, 2008, DHS received the Claimant's request for an administrative hearing.

On October 13, 2008, the SHRT issued a decision in which it denied the Claimant's applications for MA-P and Retro. On December 17, 2008, the State Office of Administrative Hearings and Rules (SOAHR) convened an administration hearing. ALJ Jay W. Sexton presided. ALJ Sexton allowed the record to remain open to enable the Claimant to submit medical information. Subsequently, new medical information was received by SOAHR and was forwarded to SHRT for review. On May 19, 2009, the SHRT issued a decision in which it found that the Claimant was disabled. The SHRT approved the Claimant's July 2008, application for MA-P and the Claimant's application for Retro MA-P effective May 2008. SHRT did not recommend a medical review because the Claimant was deceased. A copy of the May 19, 2009, SHRT decision was sent to the DHS local office. Subsequently, the DHS local office contacted SOAHR because it could not reconcile the May 2009, SHRT decision with ALJ Sexton's June

2009 Hearing Decision. On July 14, 2009, SOAHR on its own motion granted reconsideration.

DHS policy, at PAM 600, provides that a SHRT reversal of a MRT denial is final. PAM 600 provides in pertinent part:

> **SHRT REVIEW All Programs**
> The State Hearing Review Team (SHRT) reviews the Medical and State Review Team's (MRT/SRT) decision when a hearing request disputes the MRT/SRT denial of the client's claim of disability/blindness. The SHRT review will include the existing medical packet and any new medical evidence compiled after the initial MRT/SRT decision was reached. The hearings coordinator forwards hearing requests disputing MRT/SRT decisions to AH as for all other requests. Attach the hearing summary and a **copy** of the medical packet.
>
> AH registers the request and schedules a hearing to be held in approximately 30 days. AH forwards the hearing request, the medical packet and a copy of the DHS-26A, Notice of Hearing, to SHRT.
>
> If SHRT **upholds** the MRT/SRT decision, they will do the following:
>
> - Complete the DHS-282, State Hearing Review Team Decision. See RFF282.
>
> **Note:** SHRT **cannot** defer an administrative hearing. SHRT may request that the local office obtain additional needed medical information prior to the hearing. SHRT may make recommendations for the ALJ. See "MRT/SRT Disputes" in this item.
>
> - Forward the DHS-282, hearing request, medical packet, and DHS-26A to AH no later than seven days prior to the scheduled hearing date. Place the DHS-26A on top.
>
> SHRT forwards a copy of the DHS-282 to the hearings coordinator. The hearings coordinator immediately sends a copy of the DHS-282 to the AHR or, if none, the client. The coordinator should ensure that the AHR or, if none, the client understands the DHS-282 is **not** the final decision. Pending the hearing, if new or additional medical information is received, clearly identify it as "NEW MEDICAL - **NOT**

> REVIEWED BY MRT/SRT" and forward it to AH. AH will forward it to SHRT.
>
> If SHRT **reverses** the MRT/SRT decision they will do the following:
>
> - Complete the DHS-282.
>   - Forward Part 1 to AH.
>   - Forward Part 2 to the hearings coordinator.
> - Return the medical packet to AH.
>
> **The SHRT decision is final only if it reverses the decision of the MRT/SRT and approves all the client's claims of disability/blindness for the time periods claimed.** The hearings coordinator sends a copy of the DHS-282 to the AHR or, if none, the client. The specialist must do all the steps under "Corrected Case Actions" in this item. (Emphasis added)
>
> PAM 600, pp. 21- 22.

In the present matter, the evidence shows that on May 19, 2009, the SHRT issued a decision in which it reversed the September 2008, MRT and the October 2008, SHRT decisions and found the Claimant disabled for the time periods claimed. According to DHS policy, at PAM 600, the May 19, 2009, SHRT decision was final. The ALJ erred when he found in his Hearing Decision, at Finding of Fact 1, that the SHRT had denied the Claimant's disability claim.

The ALJ also erred when he relied on her erroneous Finding of Fact 1 and issued a Hearing Decision. DHS policy, at PAM 600, clearly provides that the May 19, 2009, SHRT Decision was final. Therefore, the ALJ had no jurisdiction to issue his June 2009, Hearing Decision and SOAHR has no jurisdiction to reconsider the SHRT approval of the Claimant's disability claim. Given the May 2009, SHRT approval, there is neither a need to reconsider the medical evidence submitted, nor a need to apply the 5 step sequential analysis to that evidence.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge Jay Sexton erred when he affirmed the Department of Human Services denial of the Claimant's July 2008, applications for Medicaid, and Retroactive Medicaid. ALJ Sexton also erred when he disregarded the Department of Human Services State Hearing Review Team's May 19, 2009, approval of the Claimant's July 2008, applications for Medicaid, and Retroactive Medicaid.

[redacted]
DHS Reg. No: 2009-1052
Reconsideration Decision

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision dated June 22, 2009, is REVERSED.

IT IS FURTHER ORDERED that:

The Department of Human Services will, if it has not already done so, implement the May 19, 2009, State Hearing Review Team decision and determine the Claimant's non-medical eligibility effective May 2008 and all months subsequent, up to and including the Claimant's month of death, for Medicaid, and Retroactive Medicaid.

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

cc: [redacted]

Date Signed: 7/22/2009
Date Mailed: 7/22/2009

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