

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

IN THE MATTER OF:

DHS Req. No: 2009-935
SOAHR Docket No. 2009-1447 REHD
Case No: [REDACTED]
Load 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 Claimant.

ISSUE

Did the Administrative Law Judge properly dismiss Claimant's request for a hearing of the denial of Medical Assistance (MA) benefits based on the grounds that the Social Security Administration made a final determination that Claimant was not disabled?

FINDINGS OF FACTS

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

1. On September 22, 2008, ALJ Judith Ralston Ellison issued a Hearing Decision in which the ALJ dismissed the Claimant's request for a hearing of the Department of Human Services (DHS) denial of Claimant's application for MA benefits.
2. On October 7, 2008, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a Request for Reconsideration submitted by the Claimant.
3. On January 13, 2009, SOAHR granted the Claimant's Request for Reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1 - 3 from the Hearing Decision, mailed on September 24, 2008, are hereby incorporated by reference.

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 4000.105; 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).

Under PEM Manual Item 260, an individual (non FIP-related) must be considered disabled to receive Medical assistance benefits.

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

Pursuant to policy as outlined in PEM manual Item 260 "The Social Security Administration's (SSA's) final determination that the client is not disabled/blind for SSI, not RDSI, takes precedence over an MRT determination.... SSA's determination that disability or blindness does not exist for SSI is final for MA if: ...The client failed to file an appeal at any step within SSA's 60 day limit... Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**...."

In the present case, Claimant had applied for SSI and was denied by SSA on July 15, 2008. At the time of the hearing (September 17, 2008), 64 days had elapsed since the denial and Claimant testified that he had not sought an appeal of the decision. Claimant also did not meet other criteria which would prevent the SSA denial from being considered final under DHS policy. (*i.e.*, Claimant did not alleged a different disabling condition) Based on the policy cited above the ALJ determined that the SSA determination that disability did not exist was "final" since more that 60 days had passed since the SSA denied the application for SSI. A final SSA decision that disability does not exist means that Claimant is also not considered disabled for MA.

However, the ALJs determination that there was a final SSA determination was in error. PEM manual Item 260 further states that "The client, however, has 60 days from the date he receives a denial notice to appeal ...Determinations...." Pursuant to policy there cannot be a "final" determination until a client is barred from an appeal. There is insufficient evidence to show that Claimant was not still able to appeal the SSA

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determination. As cited above the policy indicates that the time limit of 60 days begins from the date the Claimant "receives a denial notice". At the hearing, there was insufficient evidence to show when Claimant received the denial notice. Therefore, the ALJ could not make a determination that the Claimant had exceeded the 60 day appeal limit. Absent evidence that Claimant could not longer appeal the SSA decision, the ALJ could not make a determination that there was a "final SSA determination". Without a final SSA determination, policy does not bar a possible determination of disability for the purposes of the MA program.

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 she dismissed the Claimant's request for a hearing on the Department's denial of MA benefits.

IT IS THEREFORE ORDERED:

That the Administrative Law Judge's decision mailed September 24, 2008 dismissing the request for a hearing is VACATED.

IT IS ORDERED that Claimant's request for a hearing be reinstated,

AND IT IS ORDERED that the State Office of Administrative Hearing and Rules reschedule a hearing in this matter to determine if the DHS was correct in denying Claimant's application for MA on the basis of whether Claimant was disabled

/s/

Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

Date Signed: May 5, 2009

Date Mailed: May 7, 2009

cc:

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***** NOTICE *****

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