

**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. 2009-36888 REHD
DHS Reg. No. 2009-36466


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 October 12, 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 February 4, 2008, Claimant applied for MA-P, SDA, and retro MA-P, benefits.
2. On April 24, 2008, the Department of Human Services (DHS) Medical Review Team (MRT) determined that Claimant was not disabled and was ineligible for benefits.
3. On May 7, 2008, DHS received the Claimant's request for rehearing/reconsideration in which he contested the DHS denial of benefits.
4. On June 25, 2008, the State Hearing Review Team (SHRT) determined that Claimant was not disabled and was ineligible for benefits.
5. On August 25, 2009, Administrative Law Judge (ALJ) Jana Bachman issued a Hearing Decision which affirmed the DHS determination that the Claimant was not disabled and the DHS denial of benefits.

6. On September 23, 2009, the State Office of Administrative Hearings and Rules (SOAHR) received the Claimant's request for Rehearing/Reconsideration.
7. On October 12, 2009, SOAHR granted the Claimant's request and issued an Order of Reconsideration.
8. On July 31, 2009, the Social Security Administration (SSA) notified that the Claimant that SSA had determined that Claimant was disabled effective June 24, 2006.

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).

Federal regulations at 20 CFR 416.994 describe the required process to determine whether disability continues or ends for disabled adults. Continued entitlement to disability benefits must be reviewed periodically. The rules for deciding whether disability continues are set forth in paragraph (b) of this section. Additional rules apply if you were found disabled under a State plan, as set forth in paragraph (c) of this section. 20 CFR 416.994(a)

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994

The steps are:

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue. 20 CFR 416.994

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.) 20 CFR 416.994

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; *i.e.*, whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first

group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see §416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled. 20 CFR 416.994

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with §416.960. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

20 CFR 416.994

[REDACTED]
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Reconsideration Decision

DHS policy at PEM 150 and PEM 260 provides that a Social Security Administration determination (SSA) that an applicant is disabled is binding on DHS. On July 31, 2009, SSA sent the Claimant written notice that SSA determined that the Claimant was disabled effective June 24, 2006. The SSA disability determination is binding on DHS and vacates the April 24, 2008, DHS MRT determination and the June 25, 2008, SHRT determinations 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 was before the DHS MRT April 24, 2008 continuing disability review, this Administrative Law Judge has no jurisdiction to consider the Claimant's disability and I must vacate and reverse ALJ Bachman's August 2009, Hearing Decision. Therefore, pursuant to the SSA determination the Claimant is disabled, effective June 2006.

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 June 24, 2006. 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 April 2008 continuing disability review date

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

cc:

[REDACTED]

Date Signed: November 25, 2009
Date Mailed: November 25, 2009

Dehnke, Scott
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Reconsideration Decision

*****Notice*****

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