

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 20109103

Issue No: 2009/4031

[REDACTED] [REDACTED]
Hearing Date: February 24, 2010
Kent 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 hearing was held.

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 May 11, 2009, claimant applied for MA-P and SDA with the Michigan DHS.
2. Claimant did not apply for retro MA.
3. On August 20, 2009, the MRT denied.
4. On September 10, 2009, the DHS issued notice.
5. On September 22, 2009, claimant filed a hearing request.
6. On December 9, 2009, the State Hearing Review Team (SHRT) denied claimant. Pursuant to claimant's request to hold the record open for the submission of new and additional medical documentation, on October 11, 2010, SHRT once again denied claimant.
7. At the administrative hearing held on February 24, 2010, claimant testified and indicated that she had received an adverse SSA decision on an SSI

application. Claimant received that decision approximately in October/November of 2009. Claimant was alleging the same impairments. Claimant has been denied SSI by the Social Security Administration (SSA). Claimant has had a final determination by SSA. None of the exceptions apply. Claimant subsequently reapplied on June 10, 2010 pursuant to an SOLQ run on May 5, 2011. Claimant was denied once again. Claimant filed an appeal. The first decision is controlling.

8. As of the date of application, claimant was a 48-year-old female standing 5'1" tall and weighing approximately 135 to 140 pounds. Claimant has a high school diploma.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes approximately four to ten cigarettes per day. Claimant has a nicotine addiction. Exhibit 7C indicates that claimant is a "heavy smoker."
10. Claimant does not have a driver's license
11. Claimant is not currently working. Claimant last worked in February, 2008 as a server. Claimant's work history is unskilled.
12. Claimant alleges disability on the basis of asthma.
13. The October 11, 2010 SHRT decision is adopted and incorporated by reference to the following extent:

Reported treatment for shortness of breath since at least 10/07 with asthma exasperation in 2/08, 3/08 and 2/2010. Exhibit 7C. At the 709 and 2/2010 physical exams, claimant was in no distress. Alert, pleasant and appropriate. Heart functioning within normal limits. She is a smoker. The lungs had scattered wheeze. The minimal respiratory distress secondary to cough. Other major body systems were functioning normally. Condition is medically managed. Activities of daily living are performed independently Exhibits 14, 159, 163.

14. Claimant testified that she is capable of engaging in activities of daily living.

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).

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.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy states:

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 an agency until the determination is changed by the SSA.” 42 CFR 435.541(a)(b)(i). These regulations further provide: “If the SSA determination is changed, the new determination is also binding on the agency.” 42 CFR 435.541(a)(b)(ii).

In this case, medical evidence indicates that claimant received a final determination from SSA on her SSI application around the same point in time as the case herein. Claimant is alleging the same impairments. The determination was final. Claimant’s claim was considered by SSA and benefits denied. None of the exceptions applied.

For these reasons, under the above-cited policy and federal law, this Administrative Law Judge has no jurisdiction to proceed with a substantive review. The department’s denial must be upheld.

As noted above, claimant has a new pending application with SSA. However, there is no indication that claimant is alleging different impairments. Thus, the prior determination stands and bars jurisdiction by the undersigned as to the substantive issues.

In the alternative, should the sequential analysis be applied, the undersigned Administrative Law Judge would concur with the findings and conclusions of the SHRT decisions in finding claimant not disabled under federal law and state policy. It is noted that claimant alleges disability on the basis of asthma and yet continues to smoke. To this extent, the considerations in the *SIAS* case are relevant:

It is noted that claimant’s smoking and/or obesity are the “individual responsibility” types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th cir 1988) decision. In *SIAS*, the claimant was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised claimant to reduce his body weight.

In *SIAS*, the claimant was found not truly disabled because the secretary disregarded the consequences resulting from the claimant’s unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th cir 1984).

For these reasons, for the reasons stated above, and for the alternative reasons discussed herein, statutory disability is not shown.

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 determination in this matter is UPHELD.

/s/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 5, 2011

Date Mailed: July 5, 2011

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/db

cc:

