

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

IN THE MATTER OF:



Reg. No: 201113453

Issue No: 2009/4031

Hearing Date: May 4, 2011
Saginaw 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 on May 4, 2011. The record closed on July 28, 2011.

ISSUES

1. Did the Department of Human Services (DHS) properly deny claimant's MA-P application?
2. Did the Department of Human Services (DHS) properly deny claimant continuing eligibility for SDA at review?

PROCEDURAL HISTORY

1. On August 25, 2010, October 18, 2010, and November 15, 2010, MRT denied claimant MA-P. On August 25, 2010, MRT approved SDA. On November 15, 2010, MRT denied continuing eligibility. That decision was subsequently confirmed by SHRT on February 11, 2011 and subsequently on July 28, 2011.
2. The issue herein is an MA-P new application of October 18, 2010; SDA review of November 2010.

FINDINGS OF FACT

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

3. On August 25, 2010, MRT denied claimant's October 18, 2010 application and SDA benefits at review.
4. On November 23, 2010, the DHS issued notice.

5. On January 5, 2011, claimant filed a hearing request.
6. On September 16, 2011, the undersigned Administrative Law Judge received verification from the Social Security Administration indicating that claimant received an unfavorable decision on August 9, 2011 regarding her SSI application.
7. On February 11, 2011, the State Hearing Review Team (SHRT) denied claimant due to materiality of drug and alcohol abuse. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on July 28, 2011, SHRT once again denied claimant citing the materiality of claimant's alcohol abuse.
8. As of the date of application, claimant was a 45-year-old female standing 5'6" tall and weighing 190 pounds. Claimant has a 30 scale on the BMI Index classifying claimant as obese. Claimant has some "college."
9. Claimant testified that she, "Is an alcoholic, yes I suppose so my whole life." Claimant testified that she quit drinking in May 2010. Claimant has no self-reported drug problems or history. Claimant smokes approximately a pack and a half per day. Claimant has a nicotine addiction.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant is not currently working. Claimant's work history is skilled working in the banking industry as an operations specialist.
12. Claimant alleges disability on the basis of pancreatitis, alcoholism, cirrhosis of the liver, hemorrhage.
13. The February 11, 2011 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Medical evidence supports that claimant's medical conditions are acute and related to alcohol abuse. Exhibits 14, 32, 80, 107, 3, and 31 are documenting hospitalizations noting substance abuse issues and physical sequelae. Denied per 20 CFR 416.935 due to the materiality of drug and alcohol abuse.

14. The subsequent July 28, 2011 SHRT decision is adopted and incorporated to the following extent:

Submitted with new information. In 1/11 claimant's bilirubin, creatine, and albumin were within normal limits. On 2/4/11 diagnoses included cirrhosis, fibromyalgia, hypertension, and hyperlipidemia. Abdominal exam revealed hepatomegaly and diffuse, mild tenderness to palpation. Positive Tinel's

and Palen's Test at the bilateral wrist. Positive tenderness to palpitation over all trigger points for fibromyalgia. Diffuse joint pain with full range of motion in all joints. Decreased sensation in the bilateral hands and feet. Claimant is able to meet her needs in the home. On February 9, 2011, claimant was noted to have a history of alcohol abuse leading to questionable cirrhosis, fatty liver, body aches, and gastritis.

Analysis: History of alcohol abuse. In 5/10 had anemia and alcohol withdrawal syndrome. Alcohol liver disease and ascites and required paracentesis. In 8/10 claimant had acute pancreatitis. Fatty liver had improved since 5/10. Liver functions were within normal limits. She had two very different examinations. On 2/4/11 had positive joint tenderness all over trigger points for fibromyalgia. She had diffuse joint pain but full range of motion of all joints. Decreased sensation in her feet and hands. On 2/9/11 reported body aches but no muscle tenderness and only vague gastric tenderness noted.

15. Claimant testified at the administrative hearing that she is able to engage in activities of daily living, preparing meals, housework, and does not need any assistance with her bathroom and grooming needs.

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.

ISSUE 1

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, federal regulations do not allow the state agency to have jurisdiction over a case where there has been a final determination by SSI. Specifically, 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, a verification from SSA received on September 16, 2011, indicates claimant received an unfavorable decision on August 9, 2011 regarding her SSI application. Under the above cited authority, there is no jurisdiction to proceed. Claimant's claim was considered by SSA and benefits denied. The determination was final.

For these reasons, and for the reasons stated above, the department's denial of claimant's MA-P application of October 18, 2010 is upheld.

ISSUE 2

At review, the law requires specific considerations. These review regulations under the code are found in 20 CFR 416.988-.998. These state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work.

Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work.

Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

In this case, as noted in the Findings of Fact both MRT and SHRT denied claimant at review. Specifically, SHRT cited the materiality of the drug and alcohol legislation. As claimant had the same set of facts when approved for SDA when she was approved by MRT, this Administrative Law Judge finds that the decision to deny at review due to the materiality of drug and alcohol abuse must fall under the exception to approval initially-that the department is reversing its initial decision in stating that claimant never should have been approved in the first place, citing 20 CFR 416.935-.941-Materiality of Drug and Alcohol Abuse. The undersigned Administrative Law Judge has reviewed the medical evidence, and specifically with regards to the alcohol abuse. The undersigned Administrative Law Judge concurs with the decision of the MRT and SHRT in denying claimant continuing eligibility of SDA at review on the basis of 20 CFR 416.935-.946. The department's denial of SDA is affirmed for these reasons.

DECISION AND ORDER

The Administrative Law Judge decides that the department's actions under both Issues 1 and 2 were correct.

Accordingly, the department's determinations in this matter are hereby UPHELD.

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

Date Signed: October 10, 2011

Date Mailed: October 10, 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:

