

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

IN THE MATTER OF:

Issue



Reg. No.: 2011-29032

No.: 2009

Hearing Date: June 21, 2010

DHS County: Macomb (50-20)

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECONSIDERATION 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 hearing was held on June 21, 2010. Claimant appeared and testified.

This hearing was originally held by Administrative Law Judge Jonathan W. Owens. This reconsideration of Register # 2010-35552 was completed by Administrative Law Judge Landis Y. Lain.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 January 8, 2010, Claimant applied for MA-P and retro MA-P.
2. On February 24, 2010, the Medical Review Team denied Claimant's request.
3. On April 30, 2010, Claimant submitted to the Department a request for hearing.
4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 46 years old.

6. Claimant completed education through an [REDACTED]
7. Claimant has employment experience in security work and as a nurse technician.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from lymphedema of the left leg, morbid obesity, uterine bleeding, and osteoarthritis in knees and hips.
10. Claimant has limitations on physical activities involving standing, walking, bending, lifting, and stooping.
11. On January 3, 2011, the Social Security Administration found Claimant disabled as of December 2009 based upon an application submitted on July 1, 2009, with an alleged onset date of June 22, 2009.
12. On February 1, 2011, Administrative Law Judge Jonathan W. Owens issued a Decision and order stating: The Department's decision is hereby PARTIALLY REVERSED. The Department is to activate MA-P coverage in accordance with policy beginning December 2009, the date the Social Security Administration found that Claimant first became disabled. The Department's decision regarding the retro months of October 2009 and November 2009 is UPHeld.
13. On February 8, 2011, claimant's representative [REDACTED] filed a request for reconsideration stating that per BEM 260 DHS is to process a previously denied application as if it is a pending application when RSDI eligibility is established after MA denial.
14. On May 18, 2011, Administrative Law Judge Marya Nelson-Davis ordered that a reconsideration be held under the authority granted, 1993 AACS, R 400.919.
15. An SOLQ from the Social Security Administration indicates that the disability onset date is June 22, 2009.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department

will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

Rehearing/ Reconsideration Requests

All Programs

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

A written request made by the AHR or, if none, by the client, must be faxed to:

- (517) 335-6088- Attention: SOAHR Client Requested Rehearing/Reconsideration
- SOAHR (now MAHS) will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR (MAHS).
- Client or authorized hearing representative request -- received anywhere in DHS.

Granting A Rehearing/ Reconsideration

All Programs

SOAHR (MAHS) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

All Programs

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR, the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BEM, Item 600.

On December 9, 2009 the Social Security Administration determined that claimant was eligible for Retirement, Survivors and disability Insurance (RSDI) with a disability onset date of June 22, 2009. Because of the Social Security Administration determination, this Administrative Law judge must vacate the prior decision to affirm the Department's determination that claimant was not disabled for the months of October and November 2009. It is no longer necessary for the Administrative Law Judge to address the issue of disability under the circumstances. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits, if not previously done.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that based upon the December 1, 2009 decision by the Social Security Administration that found claimant disabled under Social Security rules with an RSDI disability onset date of June 22, 2009, that claimant meets the definition of medically disabled under the medical assistance and retroactive medical assistance program as of the January 8, 2010 application date and for the months of December, November, and October 2009 based upon the retroactive Medical Assistance Application.

Accordingly, the February 1, 2011 decision to deny claimant eligibility for Retroactive Medical Assistance benefits is hereby **VACATED**. The department is **ORDERED** to initiate a review of the January 8, 2010 Medical Assistance and retroactive Medical Assistance Application, if it has not already done so, to determine if all other non-medical eligibility criteria are met, and if so, determine eligibility for Medical Assistance and Retroactive Medical Assistance for the months of October 2009 forward. The department shall inform the claimant of the determination in writing. The department is also **ORDERED** to conduct a medical review of claimant's eligibility in June 2012.

/s/

Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 23, 2011

Date Mailed: May 23, 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.

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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 receipt date of the rehearing decision.

LYL/alc

cc:

