

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201313403
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: April 18, 2013
County: Berrien

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 April 18, 2013. Claimant was represented by [REDACTED] [REDACTED] [REDACTED]. Claimant failed to appear. Participants on behalf of Department of Human Services (DHS) included [REDACTED].

ISSUE

Is Claimant eligible for closed ended period of time for Medical Assistance (MA) and State Disability Assistance (SDA) - from Claimant's application date of 3/26/12 through 7/31/12 when Claimant received a favorable SSI decision?

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 3/26/12, Claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On 11/1/12, the MRT denied.
4. On 11/2/12, the DHS issued notice.
5. On 11/21/12, Claimant filed a hearing request.

6. On 2/27/12, MAHS scheduled a telephone administrative hearing for the 3/13/13. The hearing was assigned to the undersigned Administrative Law Judge (ALJ). At the date and time of the administrative hearing, council had requested exhibits to be admitted under procedures typically used with the Federal Social Security Administration Agency by forwarding them on a disk in an email. Claimant failed to follow the DHS procedures in submitting medical records. Council could not indicate whether there were duplicates with the DHS. The undersigned ALJ was instructed by her supervisor, pursuant to any objections, to adjourn the hearing to give council an opportunity to resubmit the packet in compliance with DHS procedure. No objections were made and the hearing was placed back into the scheduling area to be rescheduled. The hearing was adjourned.
7. At no time was a continuance granted or was there any discussion at the 3/13/13 hearing that the disposition of the case was for anything other than an adjournment.
8. Scheduling rescheduled the case for 4/3/13. The undersigned ALJ was coincidentally reassigned due to a random occurrence.
9. On 4/9/13, council submitted to MAHS a copy of an SSA partial favorable decision by Federal ALJ. That decision approved Claimant disability beginning "on August 1, 2012." That decision further stated that: "...Claimant was not disabled prior to August 1, 2012..." Judge [REDACTED] 3/28/13 SSA decision.
10. The SSA decision does not cover all the months for which Claimant applied with the Michigan DHS – from the month of application of March, 2012 through July 31, 2012.
11. On 4/18/13 – one day prior to the scheduled administrative hearing – the undersigned ALJ received a request by council date received in MAHS on April 17, 2013 requesting to withdraw the administrative hearing stating:

[Claimant] does not want to proceed to hearing in regard to SDA due to the decision she received in her Social Security Disability case. Please cancel her hearing.

As the withdrawal appeared to be contingent on a presumed granting of benefits which presumably would open Claimant's MA case for all months at issue, on 4/18/13 the undersigned ALJ denied the hearing request withdrawal.

12. On 4/18/13 at the time and place of the scheduled hearing, council appeared as well as the DHS and requested to go forward with the

hearing. Claimant failed to appear. Council requested on behalf of her Client that the uncovered months be substantive months be reviewed.

13. Claimant was not at the administrative hearing for testimony and/or cross-examination.
14. The undersigned ALJ did not have a copy of the SHRT decision and requested that the DHS fax that to the undersigned ALJ after the hearing. The DHS failed to do so.

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.

In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance Claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...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 federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set

forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by Claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate Claimant's claims or Claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addition and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. Thus, obesity in-and-of itself is not sufficient to show statutory disability.

At Medicaid hearings, Claimant has the burden of proof pursuant to Federal regulations found at 20 CFR 416.912(c). This is specifically with regards to steps 1 through 4:

20CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

As noted in the finding of facts, Claimant failed to appear for the administrative hearing. Claimant evidently initially wanted to withdraw the hearing request. As noted in the findings of facts, as there were still months that were not covered by the application date with the DHS, the undersigned ALJ has no power or authority under an administrative directive to approve a withdrawal where it is contingent on the DHS taking an action. In this case, the DHS would have no authority and indicated the same at the administrative hearing to open Claimant's MA case from 3/26/12 through the point at where she was approved SDA – on 8/1/12. Thus, there were still substantive months left open for review.

As noted in the Michigan Administrative Procedures Act, ALJ must make rulings based upon the evidentiary record. That evidentiary record are those exhibits admitted into the record and the testimony at the hearing. As noted in the findings of facts, Claimant failed to appear for the hearing. Claimant did not and could not give testimony regarding work and other issues with regards to disability. Council was not sworn in and did not give any personal testimony regarding the same. As there is no evidence which would clearly indicate that Claimant sustained her burden of proof with regards to working and disability, the undersigned ALJ finds that the record is not sufficient for a finding of disability prior to the Social Security determination. Thus, the DHS's denial stands. However, as Claimant received a favorable subsequent decision beginning on 8/1/12, Claimant would be eligible for MA from that date forward.

It is noted that the SSA specifically indicated that Claimant had no eligibility prior to August, 2012.

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 with regards to the closed ended period of time reviewed herein – from Claimant's March, 2012 through July 31, 2012.

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

Date Signed: 5/17/13

Date Mailed: 5/21/13

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the Claimant;
- the failure of the ALJ to address other relevant issues in the hearing decision

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Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JGS/tb

cc:

