



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 25, 2019
MOAHR Docket No.: 19-008687
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, an administrative hearing was held on September 24, 2019 with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan.

Petitioner appeared and testified unrepresented. Petitioner called no witnesses.

Respondent was represented by Jessica Kirchmeier, Hearings Coordinator.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

1. On April 26, 2019, Petitioner applied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services.
2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).
3. On July 17, 2019, the Medical Review Team (MRT) denied Petitioner's application.
4. On [REDACTED] the Department issued notice, and on August 14, 2019 Petitioner filed a timely hearing request.

5. On [REDACTED], 2018 Petitioner applied for SSI with the Social Security Administration. Petitioner was denied based on disability. On [REDACTED] 2019 Petitioner filed a late appeal and on June 11, 2019 was denied due to an untimely appeal. Petitioner has received a final social security determination based on disability.
6. Petitioner last worked March 23, 2019 25 hours per week doing janitorial work, which she had been doing for two years. Petitioner had hip surgery on [REDACTED] 2019.
7. As of the date of application, Petitioner was a [REDACTED] year-old, standing [REDACTED] tall and weighing [REDACTED] pounds. Petitioner's Body Mass Index (BMI) is [REDACTED] classifying Petitioner as obese under the BMI.
8. Petitioner testified to no alcohol/drug abuse problem or history.
9. Petitioner smokes and has a nicotine addiction.
10. Petitioner has a driver's license and can drive an automobile.
11. Petitioner's primary physician indicates that her Petitioner impairment regarding her hip surgery is not expected to last 90 days.
12. Petitioner alleges disability on the basis of a hip replacement surgery.
13. Petitioner could not identify any exhibits in the medical packet as medical evidence to support a claim of disability due to the inability to work as required under federal and state law.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the

person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

For the SDA program, the Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1.

Prior to any substantive review, jurisdiction is paramount. In that regard, policy found at BEM 261 on SDA states that the general guidelines for MA disability are to be followed. That is, a person must be found to be disabled by the MRT or SSA. Specific to this determination is the following MA disability jurisdictional policy found in BEM 260:

**Final SSI
Disability
Determination**

SSA's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA; see EXHIBIT II in this item, 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. BEM 260, p 3 of 15.

Here, unrefuted evidence is that Petitioner received a final SSA determination based on her SSI application based on disability. Petitioner failed to file a timely appeal. Petitioner has had a final determination which is binding on the state agency. Petitioner did not allege that any of the exceptions apply. As such, under federal and state law, that determination is binding on a state review of a disability claim. As such, there is no jurisdiction to proceed with a substantive review. 42 CFR 435.530.,531; MCL 400.106.

It is noted in the alternative that the medical evidence of file does not support that Petitioner meets duration required by SDA. In fact, the medical evidence explicitly states that Petitioner's impairment is not expected to last 90 days. Petitioner argued that she has a form that she expects her physician to complete that would go to the issue of duration. However, ALJs cannot take into account evidence not on the record, and as here, evidence that does not exist. In short, Petitioner failed to submit any evidence at hearing; ALJs are required to only rely on the evidence of record.

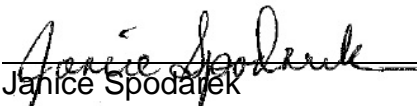
In addition, Petitioner argued that she has a handicap sticker for her car. Petitioner offered no law or policy that would entitle her to SDA disability on the grounds that a physician gave her a handicap sticker.

Based on the record established in this matter and the applicable law, and for the reasons set forth herein, there is no jurisdiction to proceed where there has been a final SSI determination by SSA based on disability. The Department's denial must be upheld.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.

JS/nr



Janice Spodarek
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:
Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Jessica Kirchmeier
1050 Independence Blvd
Charlotte, MI
48813

Eaton County DHHS- via electronic mail

BSC2- via electronic mail

L. Karadsheh- via electronic mail

Petitioner

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