

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]
Claimant

Reg. No: 2006-23985
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 25, 2007
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Janice 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, an in-person hearing was held on July 25, 2007. Claimant was represented at the administrative hearing by

[REDACTED]

ISSUES

(1) Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) application?

(2) Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) 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 3/16/05, claimant applied for MA-P and SDA with the Michigan DHS.

(2) Claimant applied for one month of retro MA.

(3) On 4/14/06, the MRT denied.

(4) On 4/18/06, the DHS issued notice.

(5) On 7/17/06, claimant filed a hearing request.

(6) Claimant testified under oath that he has an SSI application pending with the Social Security Administration (SSA). To date, neither claimant nor the representative has informed the undersigned Administrative Law Judge as to the outcome of the administrative hearing.

(7) On 9/12/06, the State Hearing Review Team (SHRT) denied claimant. Claimant's representative requested that the record be held open for the submission of new and additional medical documentation. Those medicals were submitted. On 9/21/07, SHRT returned the medical indicating: "New medical submitted is for another applicant-- [REDACTED] who was approved SSI with an onset date of 5/06...." The representative in this case was asked to review the statement regarding the submission of medicals for a different client. Subsequently, the representative submitted a new packet on 2/6/08. On 2/12/08, SHRT once again denied claimant.

(8) The undersigned Administrative Law Judge was on an extended scheduled leave of absence, returning full time on February 1, 2009. None of the cases assigned to the undersigned Administrative Law Judge were processed during that time.

(9) Claimant has a 10th grade education.

(10) Claimant testified that he does not smoke. Contrary information indicates that at the time of the application that claimant has a nicotine addiction.

(11) Claimant testified that he does not have an alcohol/drug abuse problem. Claimant testified that he does have an abuse history.

(12) Claimant does not have a driver's license due to a number of DUIs and driving without a license. Claimant testified that he will never get a driver's license again.

(13) Claimant is not currently working. Claimant last worked in 2005 as a mechanic. Claimant's work history is unskilled and semi-skilled.

(14) Claimant alleges disability due to a heart attack.

(15) The 9/12/06 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

... Admitted 2/05 with chief complaint of chest pain. Had quarrel with ex-girlfriend, smokes a lot of marijuana and drank a lot of alcohol. Exhibit 71. Diagnosis was acute inferior wall myocardial infarction. Exhibit 59.

A 5/4/05 pharmacological stress test was negative for myocardial ischemia but showed ejection fraction of 43%.

A 3/6/06 report indicates claimant... 182 pounds, blood pressure 136/74. Lungs clear with no rales or rhonchi. Abdomen revealed no tenderness or organomegaly. Extremities normal. Heart sounds, motor power, tone, sensation, reflexes all normal. Exhibit 2. Doctor indicates claimant had cardiac cath 3/25/05 revealing ejection fraction of 58% and reportedly had three stents, one in the obtuse marginal branch, another in the proximal obtuse margin and the third in the proximal left circumflex artery. Claimant did report having chest pain and the doctor indicated he should not do work that requires lifting more than 15 pounds. Exhibit 3.

A page 4 of another exam in file indicates claimant was chest pain free at that time. Doctor indicated claimant actually had been able to do a stress test but went for a very short time. While his exercise was reduced, there was no evidence of any angina or CAD present at that time. Doctor felt claimant was disabled and unable to do the type of work he did previously. Exhibit 9.

Analysis: Claimant reports 3/6/06 had three stress tests since heart attack. Some information in the file from a 5/05 pharmacological stress test and 9/05 actual exercise stress test. Both negative for ischemia and angina. No information in file on third test. Claimant had myocardial infarction and reported stent placement but that report is not in file. Per program, claimant would be limited from heavy work. Denied per 202.17. Exhibits 101 and 102.

(16) The subsequent SHRT decision is adopted and incorporated to the following extent:

Newly submitted evidence: Old cardiology notes from 7/05 reflect 12/05 angioplasty with stenting with a normal post-operative exam. Controlled blood pressure, and no significant chest pain. [REDACTED] reflect treatment for adjustment disorder and polysubstance abuse. Exhibit A.

Analysis: Claimant has a severe mental or physical impairment, but a review of the medical evidence of record shows that the alleged impairments do not equal a Social Security listing. Objective medical evidence in file demonstrates physical residual capacity to perform a wide range of unskilled light work. Denied per 202.17.

(17) The bulk of claimant's medical file regarding his physical/exertional impairments deals with claimant's physical state from the month of the stent--2/05 and within the remainder of 2005. The only current medical documentation submitted as new medical evidence by claimant's representative consists of mental health records from 2006. The more recent medical evidence regarding claimant's physical/exertional problems diagnoses claimant with hypertension, depression, irritable bowel syndrome, CAD, gastritis.

(18) The more recent mental health records diagnose claimant with depression, anxiety, rule out polysubstance abuse, insomnia, and a non-legible statement.

(19) On 1/18/07, claimant was prescribed a hernia support brace.

(20) Mental health records from June 8, 2005 indicate claimant was a high risk due to using marijuana on a daily basis.

(21) Claimant's representative submitted new medical documentation in 2007 from 2005. Claimant testified at the administrative hearing that he had a hernia surgery. There was no new medical submitted regarding any hernia issues which would constitute a disabling impairment under the law.

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).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the medical records do not rise to statutory disability under the law pursuant to Medical Vocational Grid Rule 202.17 for the reasons set forth below.

First, regarding claimant's physical problems, claimant applied initially due to a heart attack. Claimant's heart attack was in February, 2005. There are many medical records which address claimant's ability to work up to approximately eight to nine months after the surgery. Many of these documents state that claimant cannot work. Ruling these ambiguities in claimant's favor, this Administrative Law Judge will find that claimant meets a severe impairment and was unable to work and did not have the residual functional capacity to work from the month of application until the end of November, 2008. This Administrative Law Judge does not find the same for the MA program.

Claimant's medical evidence taken as a whole--both the packet as it existed at application and the newly submitted medical documentation focuses on his medical state during the year of his heart attack. There is no indication that claimant's impairment meets duration. In fact, all the new medical submitted in the main addresses claimant's state initially after the surgery. The only current new medical which would be applicable or go to duration would be the mental health

notes from late 2006. However, a review of these notes does not indicate that claimant's adjustment disorder and polysubstance dependence along with borderline intellectual functioning rise to statutory disability as it is defined under the law. Claimant has the residual functional capacity to do other work. The medical documents taken as a whole do not meet the sufficiency requirement found at 20 CFR 416.913(b), .913(d), and .913(e). For these reasons, and for the reasons stated above, statutory disability for the MA program is not shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides:

- (1) The department's determination with regards to claimant's MA was correct.

Accordingly, the department's decision is **PARTIALLY REVERSED**.

- (2) The department's determination with regards to claimant's SDA was incorrect.

Accordingly, the department's denial of claimant's SDA is hereby **PARTIALLY REVERSED**. Claimant is eligible for a closed-ended period of time for SDA based upon the medical evidence--from the month of application until November 30, 2006. The department shall issue supplemental benefits to claimant for the closed-ended period of time. The department does not need to open this case.

/s/
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 4, 2009

Date Mailed: June 4, 2009

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.

JS/cv

cc:

