

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: 2007-14107
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 16, 2007
Benzie 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, a telephone hearing was held on August 16, 2007.

ISSUE

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 3/9/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for retro MA.
- (3) On 3/23/07, MRT denied claimant's MA application but approved claimant's

SDA. There is no SDA issue herein.

- (4) On 3/28/07, the DHS issued notice.
- (5) On 4/6/07, claimant filed a hearing request.
- (6) Claimant has an SSI application pending with the Social Security Administration (SSA).
- (7) On 7/9/07, the State Hearing Review Team (SHRT) denied claimant. Claimant requested that the record be held open for the submission of new and additional medical documentation. Among the documentation were a number of exhibits submitted at the telephone administrative hearing. These exhibits were not forwarded to SOAHR until April, 2009. Claimant also requested that the record be held open to submit an updated report from [REDACTED], and updated progress notes and a letter from [REDACTED]. These last two items were never received or submitted by claimant pursuant to local office documentation received in April, 2009. Pursuant to a subsequent review of the new medical documentation submitted at the administrative hearing, on 5/5/09 SHRT denied claimant.
- (8) As of the date of application, claimant was a 47-year-old female standing 5' 4" tall and weighing 130 pounds. Claimant previously weighed 103 pounds at application due to her TB. Claimant has 14 years of education.
- (9) Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes approximately one to two cigarettes per day.
- (10) Claimant does not have a driver's license due to it being revoked for a DUI.
- (11) At application, claimant testified that she is not currently working. Claimant's work history is unskilled.
- (12) Claimant alleges disability on the basis of tuberculosis.
- (13) The 7/9/07 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Admitted to hospital 2/07 due to micro bacterium tuberculosis cavitory pneumonia. Exhibit 155. Also found to have three gastric ulcers. To receive treatment and to continue treatment after discharge. Exhibit 153. She is to be followed by [REDACTED] and they are to monitor her compliance with [REDACTED]. Claimant is not expected to be disabled for 12 month in a row. Denied for lack of duration. Exhibit 162.

(14) The 5/9/2009 subsequent SHRT decision is adopted and incorporated by reference herein.

(15) No new medical documentation was submitted as of the contact with the local office in April, 2009. Claimant does not meet duration.

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).

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). After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge concurs with the SHRT findings of its 7/9/07 and 5/9/09 decisions. These decisions are adopted and incorporated by reference herein. These decisions indicate that there is no medical evidence to show that claimant meets duration. Claimant had tuberculosis and had significant improvement. Claimant testified at the administrative hearing with regard to the March 28, 2007 letter that she was cleared from quarantine as of 6/21/07. There is no medical evidence that claimant meets duration as required under federal and state law and thus, the department's denial of claimant's MA-P application is hereby upheld.

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.

/s/

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

Date Signed: July 6, 2009

Date Mailed: July 7, 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

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