

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: 2007-21505
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 6, 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 December 6, 2007. Claimant was represented by [REDACTED]

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) 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 4/13/06, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 4/10/07, the MRT denied.

- (4) On 4/17/07, the DHS issued notice.
- (5) On 7/10/07, claimant filed a hearing request.
- (6) Claimant testified at the administrative hearing that she applied for SSI on one occasion and that the case is currently on appeal. On 11/13/09, the undersigned Administrative Law Judge received an updated SOLQ from the local office from Social Security indicating claimant's current application date is 12/27/07. Claimant received a final SSI disposition as she went in and re-applied pursuant to the 12/27/07 verification.
- (7) On 10/10/07, the State Hearing Review Team (SHRT) denied claimant. Pursuant to claimant's request to hold the record open for the submission of new and additional medical documentation, on 6/12/08 SHRT once again denied claimant.
- (8) The undersigned Administrative Law Judge was on a scheduled leave of absence from 8/1/08, returning full time 2/1/09. None of the ALJ's pending cases were reassigned while on leave; no protected time afforded before or after leave for issuing decisions.
- (9) As of the date of application, claimant was a 40-year-old female standing 5' tall and weighing 250 pounds. Claimant's BMI Index is approximately 49. Claimant is considered to be morbidly obese. Claimant has one year of college.
- (10) Claimant does not have an alcohol/drug abuse problem or history. As of the date of application, claimant smoked 1 ½ packs to 1 pack of cigarettes per day. Claimant has a nicotine addiction.
- (11) Claimant has a driver's license. Claimant testified she does not drive due to "night blindness."
- (12) Claimant is not currently working. Claimant last worked in 2003 in production work. Claimant's work history is unskilled.

(13) Claimant alleges disability on the basis of multiple impairments--at application including: chest pain, unstable angina, sacralization of L5, major arthritic changes, asthma, obesity, GERD, bilateral carpal tunnel syndrome, edema, and hyperglycemia. At the administrative hearing, claimant's representative added the need for a total hysterectomy scheduled for January 11, 2008.

(14) The 10/10/07 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...Exam of 3/8/07 indicates weighed 260 pounds... Blood pressure 140/100. Lungs clear. Heart sounds normal. Neurological exam grossly intact. No edema present. Denied any chest pain. Reportedly lost 120 pounds with diet and walking. Reportedly had pulmonary function study done (not in file) and showed small airway obstruction. Exhibit 7.

Hospital Discharge Summary for 1/06 reports chest pain and stable asthma as admitting diagnosis. Chest x-ray within normal limits. Reportedly had not been wheezing or short of breath. Had a negative stress test and cardiac enzymes. There was 5/5 muscle strength. Exhibit 19.

Analysis: Claimant had a myriad of allegations presented by authorized representative. Some of which were not documented. For example, she did not have chest pain on the most recent exam and the stress test of 1/06 was negative. No indication of significantly limiting lung disease or arthritis. Due to her lung condition, she should avoid walking around fumes and temperature extremes. However, it was noted that claimant continued to smoke.

(15) The 6/12/08 subsequent SHRT decision is adopted and incorporated by reference herein. SHRT indicates there is no change in its previous decision based upon the new medical. Claimant's condition is considered non-severe pursuant to 20 CFR 416.920(c).

(16) Claimant testified at the administrative hearing that she could do a desk job if she were trained.

(17) Claimant testified at the administrative hearing that she basically is independent with her activities of daily living.

(18) The record was held open in part for claimant to submit medicals from a “total hysterectomy” scheduled for January 11, 2008. The representative filed a closing statement on February 22, 2008.

(19) The February 22, 2008 statement from the representative is convoluted, confusing, and jumps from different points in time within the same discussion.

(20) Claimant made extraordinary complaints of pain at the administrative hearing, not corroborated by the medical documentation.

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.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy states:

Final SSI Disability Determination

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

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **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**. PEM, Item 260, pp. 2-3.

Relevant federal regulations are found at 42 CFR Part 435. These regulations provide:

“An SSA disability determination is binding on an agency until the determination is changed by the SSA.” 42 CFR 435.541(a)(b)(i). These regulations further provide: “If the SSA determination is changed, the new determination is also binding on the agency.” 42 CFR 435.541(a)(b)(ii).

Evidence pursuant to an SOLQ received by the undersigned Administrative Law Judge on November 13, 2009 indicates that claimant has gone back to Social Security to reapply effective 12/27/2007. At claimant's hearing earlier in the month, claimant testified that her application was pending. Based upon claimant's testimony under oath, claimant has received an unfavorable final decision by Social Security. There is no jurisdiction under such set of facts pursuant to the above-cited authority.

An alternative sequential analysis argument can be made as follows:

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.

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 decision in finding claimant not disabled on the basis of non-severe impairments. This Administrative Law Judge agrees with SHRT that claimant's representative cited numerous alleged impairments as affecting her ability to work, many of which were not significantly documented in the medical packet. This Administrative Law Judge also notes that the closing statement on February 22, 2008 mentions the January 11, 2008 hysterectomy but fails to mention why the medical records were not included in the packet. Moreover, the statement by the representative was convoluted and confusing--it seems to allege numerous problems which are not corroborated by the medical evidence pursuant to the requirements found at 20 CFR 416.913(b), .913(d), and .913(e). The federal law requires corroboration of alleged medical impairments pursuant to 20 CFR 416.927.

Moreover, claimant's significant complaints of pain are not corroborated by the medical documentation pursuant to 20 CFR 416.929. See also 20 CFR 416.928.

It is also noted that claimant testified at the administrative hearing that if she were properly trained she could do a desk job.

Finally, this Administrative Law Judge wishes to note that the facts in this case are similar to those discussed in *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988), which indicates that behaviorally-driven behaviors do not rise to statutory disability as it is defined under the law. Federal regulations recognize that claimant is considered to be a fairly young individual at only 40 years of age. Claimant complains of asthma problems, uses an inhaler, and at application continued to smoke.

For these reasons, and for the reasons stated above, statutory disability is not shown.

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: December 8, 2009

Date Mailed: December 8, 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.

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