

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: 2007-24190

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 15, 2008

Ingham County DHS

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, an in-person hearing was held at the Ingham County office in Lansing, Michigan. Claimant was represented at the administrative hearing by [REDACTED]

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 12/29/06, claimant applied for MA-P with the Michigan DHS.
- (2) Claimant applied for one month of retro MA.
- (3) On 5/30/07, the MRT denied.
- (4) On 5/30/07, the DHS issued notice.

(5) On 8/24/07, claimant filed a hearing request.

(6) Claimant testified under oath that she has an SSI application pending with the Social Security Administration (SSA). To date, neither [REDACTED] nor the client has informed the undersigned Administrative Law Judge that claimant has received an adverse Social Security ruling.

(7) On 12/3/07, the State Hearings 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 2/1/08 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 43-year-old female standing 5' 3" tall and weighing 170 pounds. Claimant's BMI is 30.5, classifying claimant under the obesity scale. Claimant indicated she has a GED education. Contrary information which claimant's representative filled out stated that claimant does not have a GED.

(9) Claimant testified that she smokes 1 ½ packs of cigarettes per day. Claimant has a nicotine addiction.

(10) Claimant testified that she does not have a drug abuse problem or history. Contrary medical evidence indicates claimant has a significant drug abuse problem and history. Claimant testified that she has an alcohol problem, goes to AA, and has been denied treatment until she gets her drinking under control. Claimant has shown up for medical appointments intoxicated.

(11) Claimant does not have a driver's license.

(12) Claimant is not currently working. Claimant last worked in April of 2005 as a cook and waitress. Claimant's work history is unskilled. Claimant separating from her last position due to being incarcerated for a DUI.

(13) Claimant alleges disability on the basis of diverticulitis, hypertension, COPD, depression, and alcoholism.

(14) The 12/3/07 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

... underwent a sigmoid resection due to ruptured diverticulitis in 11/06 with post-operative complication in 1/07. Exhibits 34-37. According to 4/07 consult, claimant reported long history of heavy alcohol abuse. Smelled strongly of alcohol and tobacco at the exam.... Blood pressure 144/77. Diminished breath sounds without wheezing, rales or rhonchi. Liver was not enlarged. Gait was normal. She did not exhibit any neurological deficits....

... A 5/07 psych exam noted a previous full scale IQ of 73 with low average reading skills. Memory intact. Reported a long history of alcohol, marijuana, and cocaine abuse. Smelled strongly of alcohol at the exam and was intoxicated. Diagnosed with alcohol dependence and anxiety. Exhibits 3-5.

SHRT denied claimant on the basis of 20 CFR 416.921(a)/severity.

(15) The 2/1/08 subsequent SHRT decision is adopted and incorporated to the following extent:

... claim remanded with newly submitted evidence.... In 9/07 claimant was hospitalized for pneumonia. Office visit from 2/07 shows claimant is following up due to anastomotic leak. CT scan of 2/07 of abdomen and pelvis showed abscess no longer present in the right hemipelvis. On [REDACTED], claimant was hospitalized for community-acquired pneumonia. Treated and condition improved. Prior SHRT decision of 12/3/07 showed claimant had no residuals from her intestinal surgery. Newly submitted evidence does not significantly or materially alter the previous recommended decision.

(16) Claimant has approximately \$100,000 in hospital bills.

(17) Claimant was hospitalized approximately five times between [REDACTED]

The first two were related to diverticulitis; the last two related to complications from pneumonia.

(18) Claimant exhibited a shaking behavior at the administrative hearing.

(19) Old medical evidence includes:

- (a) A psychological evaluation [REDACTED] indicating claimant appeared for the evaluation inebriated. The psychologist notes: "... and that may have contributed to her agitated and rather decompensated presentation at the time of this evaluation." Exhibit 4. Claimant was diagnosed with alcohol dependence, chronic; general anxiety disorder, severe with social anxiety. Exhibit 5.
 - (b) A [REDACTED] evaluation indicating claimant appeared for the evaluation "overtly intoxicated." Exhibit 7. Claimant's assessment diagnoses claimant with first and foremost "acute alcoholism." The physician also notes claimant has a diagnosis of "nicotine abuse, longstanding problems of anxiety and depression (not seeing any health professional), improving from diverticulitis, hypertension." Exhibit 10. Claimant had a pulmonary function test while intoxicated finding mild obstruction, which the physician notes "more consistent with COPD versus a true reactive airway disease." Exhibit 10.
 - (c) An FIA-49 completed 7/9/07 does not indicate that claimant has any restrictions with regards to standing, walking, or sitting out of an 8-hour workday. Claimant can lift up to 20 pounds frequently and has no mental limitations. Exhibit 16.
- (20) New medical evidence includes:
- (a) A [REDACTED] note indicating that claimant consumes up to a fifth of alcohol per day.
 - (b) A [REDACTED] letter indicating claimant was seen for follow up with inpatient hospitalization for diverticular disease. Claimant's active diverticulitis subsided with conservative measures. Claimant was in need of a sigmoid resection tentatively scheduled [REDACTED]

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

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.

These federal guidelines state in 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.

...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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

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). This second step is a *de minimus* standard. Both of the SHRT decisions denied claimant at Step 2 of the sequential analysis--on the basis that claimant did not have a severe impairment. This Administrative Law Judge agrees with the SHRT decision as to claimant's physical impairments with regards to: diverticulitis, pneumonia, hypertension, COPD, and depression.

With regards to claimant's pneumonia, claimant's [REDACTED] indicated that with treatment her condition improved. Claimant's [REDACTED] showed no residuals from intestinal surgery. With regards to COPD, claimant has a nicotine addiction. However,

claimant showed up intoxicated for the pulmonary function test. There is no indication from the test found on Exhibit 10 that claimant has a true reactive airway disease. The 7/9/07 FIA-49 does not indicate that claimant has any physical restrictions with regards to standing, walking, or sitting out of an 8-hour workday. See Exhibit 16. With regards to claimant's other alleged physical impairments, there is no evidence to show that they meet the sufficiency requirements found at 20 CFR 416.913(b), .913(d), and .913(e), which would meet statutory disability.

With regards to claimant's depression, the psychological evaluation completed [REDACTED] indicates that claimant showed up inebriated for the evaluation. The psychologist states: "... and that [alcohol inebriation] may have contributed to her agitated and rather decompensated presentation at the time of this evaluation." Exhibit 4. Moreover, claimant's primary diagnosis is: "Alcohol dependence, chronic."

However, this Administrative Law Judge differs with SHRT in that claimant's alcoholism itself is severe. Thus, the analysis will continue with regards to claimant's alcoholism.

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. 20 CFR 416.920(f). This ALJ finds that due to claimant's alcoholism which appears to control her life, claimant could not return to past relevant work.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine if the individual has the residual functional capacity to do other work. 20 CFR 416.920(g). Pursuant to Medical Vocational Grid Rule 202.18, a finding of not disabled is required.

In the alternative, it is noted that should statutory disability be or have been found, claimant would be ineligible under the DA&A legislation pursuant to 20 CFR 416.214, .935-.2941.

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

Date Signed: April 20, 2009

Date Mailed: April 20, 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.

JGS/cv

cc:

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