

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: 2007-28519
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 26, 2008
Tuscola 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 March 26, 2008, in Caro, Michigan.

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 6/5/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 7/9/07, the MRT denied.
- (4) On 7/13/07, the DHS issued notice.

(5) On 7/17/07, claimant filed a hearing request.

(6) Claimant has an SSI application pending with the Social Security Administration (SSA). An SOLQ run on 4/2/09 shows that claimant's case is still at hearing.

(7) On 10/25/07, 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 4/14/08 SHRT once again denied claimant. The undersigned Administrative Law Judge was on a scheduled leave of absence from 8/1/08, returning full time 2/1/09 without protected time.

(8) As of the date of application, claimant was a 51-year-old female standing 4' 10" tall and weighing 192 pounds. Claimant's BMI Index is 39.7 classifying claimant as morbidly obese under the BMI Index. Claimant has two years of college. Claimant testified she was learning disabled.

(9) Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.

(10) Claimant does not have a driver's license. Claimant has never obtained one in her lifetime. Claimant's testimony was that she was never able to pass the test.

(11) Claimant is not currently working. Claimant last worked in September 2007, running an in-home daycare. Claimant's work history is unskilled.

(12) Claimant alleges disability on the basis of diabetes, obesity. At hearing and based upon new medical evidence submitted after the initial SHRT decision, claimant also alleged a mental impairment.

(13) The 10/25/07 SHRT decision denied claimant on the basis of a lack of severity. That decision is adopted and incorporated by reference to the following extent:

Disability alleged due to diabetes and obesity.

Medical Summary: 8/06 report shows that due to the slow economy, claimant has had fewer children in day care and this is threatening her general livelihood. No history of mental health treatment or psychiatric hospitalization. Specialized testing revealed functioning in borderline range of intelligence. She is very functional and grossly independent and competent in performing activities of daily living. Treating physician notes 6/07, she is out of shape and needs to better control her diabetes. No targeted end organ damage reported. Blood pressure 120/80. Functionally, she has full use of arms and feet and legs for repetitive actions, and needs no assistive device for ambulation. Exhibits 30, 31.

(14) The 4/14/08 subsequent SHRT decision is adopted and incorporated to the following extent:

Psychiatric eval of 9/10/07 reports claimant to have mental status exam only mildly impaired with some concrete thinking, and limited insight and judgment. Reports no inpatient treatment and only recently had begun receiving medication from treating physician assistant for psychiatric medications.... Denied per Medical Vocational Grid Rule 204.00 as a guide.

(15) An 6/19/07 FIA-49 diagnoses claimant with Type 2 diabetes, obesity, and hyperlipidemia. Claimant can stand and/or walk about 6 hours in an 8-hour workday, and can sit for approximately 6 hours out of an 8-hour workday. Claimant has no restrictions with regards to hand/arms and feet/legs. Claimant has some limitations regarding sustained concentration and comprehension. Exhibits 13 and 14.

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).

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. After careful review of the substantial and credible evidence on the whole record, based upon claimant's medical evidence with regards to her physical impairments, this Administrative Law Judge essentially concurs with the first SHRT decision which found that claimant did not meet statutory disability on the basis that claimant does not meet the severity requirement. In reaching this conclusion, it is noted that the 49 completed on 6/19/07 with regards to claimant's physical problems--obesity,

hyperlipidemia, and Type 2 diabetes--did not indicate that they rise to any severe problems with regards to standing, sitting, walking, ambulation, and use of claimant's hands/arms and feet/legs. Thus, as to claimant's alleged physical impairments, there is no statutory disability shown. The analysis will continue only with regards to claimant's alleged mental impairment(s).

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, a review of the substantial and credible evidence on the record with regards to claimant's alleged mental impairment(s) does not indicate that claimant could not return to past relevant work. While claimant has some memory problems with regards to sustained concentration, skilled work would be difficult. However, claimant has always had skilled work issues and would not be able to fully perform a skilled job most likely. However, claimant's last past relevant work was not skilled work. While claimant clearly has some problems and issues, statutory disability is quite specific with regards to documentation and evidence to substantiate a disabling impairment pursuant to the requirements at 20 CFR 416.913. Claimant's evidence does not meet the sufficiency requirements and thus, the department's denial is upheld.

It is noted in the alternative that Medical Vocational Grid Rule 204.00 would apply and would not be inconsistent with finding no statutory disability at Step 4, as SHRT found.

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: August 17, 2009

Date Mailed: August 18, 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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