

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: 2007-07952
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 10, 2007
Hillsdale 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 on July 10, 2007. Claimant was represented at the administrative hearing by [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) 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 9/26/06, claimant applied for MA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 10/25/06, MRT approved claimant's SDA. There is no SDA issue herein.

- (4) On 10/26/06, MRT denied claimant's MA-P application, at issue herein.
- (5) On 10/26/06, the DHS issued notice.
- (6) On 1/25/07, claimant filed a hearing request.
- (7) Claimant testified under oath that he has an SSI application pending with the Social Security Administration (SSA). Claimant has had prior denials but testified at the administrative hearing that he has additional impairments.
- (8) On 12/6/07, 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 4/23/07 SHRT once again denied claimant.
- (9) Claimant is a 50-year-old male, standing 5' 7" tall and weighing 158 pounds. Claimant has a high school education.
- (10) Claimant testified that he smokes approximately one pack of cigarettes per day. Claimant has a nicotine addiction.
- (11) Claimant consumes approximately two 40 ounce beers per day.
- (12) Claimant testified that he lost his driver's license due to nonpayment of child support.
- (13) Claimant is not currently working. Claimant last worked in [REDACTED]. Claimant's work history consists of unskilled work.
- (14) Claimant alleges disability on the basis of multiple impairments, including a neck fracture at C1 suffered in [REDACTED], chronic neck pain, bilateral kidney stones, alcoholic hepatitis, depression, anxiety, and memory decline.
- (15) An FIA-49 completed [REDACTED] indicates a diagnosis of incontinence, E.D., renal stones, back pain, renal calculi, back pain.

(16) On [REDACTED], claimant was admitted to the hospital due to neck pain. Claimant had an accident on a bicycle and suffered a cervical fracture. The fracture failed to heal properly. A DHS-49 completed [REDACTED] indicates claimant was unable to work .

(17) A DHS-49B completed [REDACTED] made observations concerning problems and difficulty with breathing, fatigue, pain or distress, standing, and walking.

(18) A number of documents, both in the hospital and at claimant's physicians' offices, diagnosed claimant with numerous multiple impairments including neck pain, memory decline, CPT, COPD, rhinitis, and insomnia.

(19) A CT of the cervical spine completed [REDACTED] indicates a fracture not properly healing.

(20) Claimant's physician composed a [REDACTED] letter indicating chronic neck pain, fracture of odontoid process. The physician also noted claimant has bilateral kidney stones, alcoholic hepatitis, and memory decline. The physician indicates that claimant is unable to work. A1.

(21) A [REDACTED] letter from claimant's regular treating physician [REDACTED], stating that claimant has numbness of his arms as well as bladder incontinence, which is progressive. The physician notes that claimant is unable to work. Claimant Exhibit #2.

(22) A [REDACTED] letter from [REDACTED] indicating neck pain and fracture of odontoid process. Claimant has bilateral kidney stones, alcoholic hepatitis and memory decline. The physician states that claimant is unable to work at that time. Exhibit 12.

(23) A DHS-49 completed by [REDACTED] on [REDACTED] indicating that claimant has a complete weight restriction. Claimant cannot stand and/or walk during an 8 hour workday. Claimant cannot use his hands/arms for pushing/pulling. Claimant's mental status is limited due to concentration problems. Exhibit 37.

CONCLUSIONS OF LAW

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).

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. It is the last step for alleged mental impairments. 20 CFR 416.920(e).

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(f). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant meets statutory disability on the basis of Medical-Vocational Grid Rule 201.12. Claimant's medical shows that claimant is unable to work due to his medical impairments. In reaching this conclusion, it is noted that the multiple impairment section is given much weight pursuant to the considerations of 20 CFR 416.922 and .923:

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

This Administrative Law Judge has reviewed the law found at 20 CFR 416.936 and finds that claimant's alcohol issues are not material to claimant's disability.

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 incorrect.

Accordingly, the department's denial is hereby REVERSED. The department is ORDERED to make a determination if claimant meets the non-medical criteria for MA . If so, the department is ORDERED to open an MA case for the month of application, including any retro months, as permitted under policy and procedure. If eligible, the department shall issue any supplemental benefits to claimant.

The department shall review this case in accordance with its usual policy and procedure.

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

Date Signed: February 2, 2009

Date Mailed: February 3, 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:

