

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: 2007-22079

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 20, 2007

Newaygo 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.

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 5/17/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 7/2/07, the MRT denied.
- (4) On 7/6/07, the DHS issued notice.

(5) On 8/2/07, claimant filed a hearing request.

(6) As of the administrative hearing, claimant had an SSI application pending with the Social Security Administration (SSA). Pursuant to a verification received from Social Security, claimant had to have received a final determination from the hearing pending as of the administrative hearing as claimant has reapplied in 2008.

(7) On 10/12/07, 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 6/4/08 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 assigned and/or processed while the undersigned ALJ was on leave; no protected time afforded before or after leave for issuing decisions.

(9) As of the date of application, claimant was a 44-year-old female standing 5' 6" tall and weighing 218 pounds. Claimant's BMI Index is 35.2, classifying claimant as obese. Claimant has a 10th grade education.

(10) Claimant testified she does not have any alcohol/drug abuse problems. Claimant smokes approximately 1 to 1 ½ packs of cigarettes per day. Claimant has a nicotine addiction.

(11) Claimant does not have a driver's license. Claimant testified that it was suspended for arrearages in child support.

(12) Claimant is not currently working. Claimant indicates on one of her exhibits that she has worked in fast food and factory production most of her life. Claimant also indicated that she last worked in January of 2000.

(13) Claimant alleges disability on the basis of back pain, depression, and some vocal cord problems.

(14) The 10/12/07 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

In 2/07 internist noted she cannot work due to degenerative joint disease of the lumbar spine, rheumatoid arthritis, hepatitis, acid reflux. Exhibit 33. A 6/07 x-ray showed mild degenerative disc disease. Exhibit 31. On 6/07 exam, 5' 6" and weighed 203 pounds. Decreased range of motion of her back with no neurological deficits and her blood pressure was 142/92. Exhibit 24. A 6/07 [REDACTED] assessment was normal with no true Axis I diagnosis (all were ruled out diagnoses). Exhibits 12-14.

ANALYSIS: No objective evidence of significant disabling physical or mental impairment that would preclude basic work activity. While treating physician indicates claimant cannot work due to physical impairments, the MSO is inconsistent with the great weight of the objective medical evidence per 20 CFR 416.927. And thus, will not be given controlling weight. Denied per 20 CFR 416.921(a).

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

MEDICAL SUMMARY: Newly submitted information: [REDACTED] [REDACTED] consult of 6/28/07 reports claimant to be assessed with fibromyalgia with 18/18 tender points with associated longstanding sleep disorder, overweight and deconditioning, positive rheumatoid factor without current evidence of rheumatoid arthritis; right hand and arm erythema secondary to spider bite. A recommendation of exercise prescription was given.... Treatment notes of 11/27/07 report treatment for spider bite... partial physical exam performed at that time within normal limits.

...

ANALYSIS: Newly submitted information does not significantly impact previous recommendation.

(16) Claimant's file contains a number of radiology reports documenting Achilles' tendonitis, verification of the polyp in the right maxillary sinus, no malignancies identified, normal left ribs.

(17) A [REDACTED] documents

many symptomatic assessments not rising to statutory disability. Claimant was recommended:

Give an exercise prescription for graded and progressive aerobic exercise program; sleep evaluation would be of benefit; and other non-statutorily recommendations.

(18) There are a number of progress notes in claimant's exhibits documenting problems with a cough, congestion, occasional production of yellowish spectrum, allergies, and wheezing.

(19) Claimant had a subsequent reapplication which was denied, appealed, and in which a denial was affirmed by Administrative Law Judge Sundquist on 11/19/2008.

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). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge concurs with the SHRT decisions in finding claimant not disabled pursuant to 20 CFR 416.921(a) for the reasons set forth below.

First and foremost, this Administrative Law Judge concurs with SHRT in finding that the medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(4). Thus, federal law would not indicate that this opinion is to be giving controlling weight.

As noted in the findings of fact, a number of progress notes contain several and numerous repeated problems documented by claimant's physician(s) regarding complaints as to wheezing, congestion, allergies, coughing. As already noted, claimant continues to smoke 1 pack to 1 ½ packs per day, as she has done so all of her life. Claimant's behaviors are inconsistent with an individual arguing severe disability from wheezing, congestion, allergies, and coughing while smoking 1 to 1 ½ packs of cigarettes per day.

Regarding obesity, as already noted, obesity is not recognized as statutorily disabling under the law. The obesity listing was removed about the same time that congress removed the alcohol and drug addiction from the listing of impairments. The removal reflects the view that there are strong behavioral components outweighing the medical effects until or unless a medical associated problem becomes independent. None of those are exhibited herein.

Claimant's numerous radiology reports do not document a statutorily disabling condition or conditions as it is defined under federal and state law.

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, compliance and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

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

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: January 27, 2010

Date Mailed: January 27, 2010

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

cc:

[REDACTED]