

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: 2007-30212
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 31, 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, a telephone hearing was held.

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 6/25/07, claimant applied for MA-P with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 7/20/07, the MRT denied.
- (4) On 8/13/07, the DHS issued notice.

(5) On 9/10/07, claimant filed a hearing request.

(6) Claimant testified that she has not applied for SSI or RSDI because she is “not 100% disabled.”

(7) On 12/27/07, 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 2/7/08 SHRT once again denied claimant. SHRT denied in both cases due to a non-severe impairment.

(8) As of the date of application, claimant was a 53-year-old female standing 5’ 4” tall and weighing 235 pounds. Claimant’s BMI is 40.3, classifying her under the BMI Index as morbidly obese. Claimant has a high school diploma.

(9) Claimant testified that she does not smoke.

(10) Claimant testified that she does not have an alcohol/drug abuse problem or history.

(11) Claimant has a driver’s license and can drive a motor vehicle.

(12) Claimant is currently working. Claimant works approximately 3 hours per day, up to 7 days per week as a home help aide. Claimant last worked full time in January, 2007.

Claimant left the work history on the form she completed for her application with the DHS blank.

Claimant testified that her work history includes managerial work at fast food restaurants.

Claimant’s work history is unskilled.

(13) Claimant alleges disability on the basis of abdominal pain.

(14) The 12/27/07 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.

(15) The 2/7/08 subsequent SHRT decision is adopted and incorporated herein.

(16) Claimant suffered abdominal pain in May, 2007. On 6/25/07, claimant underwent laparoscopic cholecystectomy. Exhibit 27. A July 5, 2007 return follow-up post surgery indicates “patient asymptomatic... Wounds have healed very well with no evidence of an infection. She was advised to see me on a PRN basis.” Exhibit 29.

(17) Claimant’s medical file does not contain any functional limitations.

(18) Claimant stipulated at the administrative hearing that she had no evidence that she could not work.

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).

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 currently working. 20 CFR 416.920(b). Claimant testified at the administrative hearing that she works 3 hours a day, up to 7 days per week. It is unknown what pay claimant receives for her approximately 20 hours of

work per week. Claimant's work may be a *prima facie* case of SGA. However, since the record is unclear, and claimant failed to fully complete her work history form, this ALJ will rule the ambiguities in her favor and continue the analysis.

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, this ALJ finds that claimant is not eligible for statutory disability on the basis of Step 2 for the reasons set forth below.

Claimant's primary problem was the abdominal pain she started experiencing in May, 2007. On 6/25/2007, claimant underwent a laparoscopic cholecystectomy. Exhibit 27. Within a week, claimant was "asymptomatic and her wounds had healed very well with no evidence of infection." See Exhibit 29. This procedure does not rise to statutory disability as it is not a severe impairment which meets duration under Step 2.

Moreover, claimant stipulated at the administrative hearing that she does not have any evidence that she cannot work. Claimant also stipulated that she did not apply for Social Security because she did not consider herself "100% disabled." As already noted, the laws which apply to being disabled for the MA program for which claimant is applying and appealing, are the identical laws for Social Security applicants. 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: May 13, 2009

Date Mailed: May 14, 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

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.