

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: 2007-30727

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 23, 2008

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 7/23/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 9/6/07, the MRT denied.
- (4) On 9/6/07, the DHS issued notice.

(5) On 9/12/07, claimant filed a hearing request.

(6) Claimant has an SSI application pending with the Social Security Administration (SSA). Subsequent documentation appears to indicate that claimant was denied without an appeal pending. Claimant alleges worsening and additional conditions. Jurisdiction is proper.

(7) On 12/12/07, 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 2/4/08 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 49-year-old male standing 6' tall and weighing 215 pounds. Claimant has a high school diploma.

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

(10) Claimant testified that he does not use or abuse alcohol or drugs. Medical evidence is replete with numerous medical documentation indicating a significant and severe legal and non-legal narcotic, prescription, drug addiction, drug seeking behavior, drug abuse, and drug withdrawal. See Exhibits 1-477.

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

(12) Claimant is not currently working. Claimant last worked in 2004 detailing cars. Claimant has also worked in sales and carpet cleaning. Exhibit 6.

(13) Claimant's work history is skilled work.

(14) Claimant alleges disability on the basis of headaches/migraines, liver, depression, hepatitis C.

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

... Treating physician notes claimant has diagnosis of hepatitis C with intermittent right upper quadrant pain. Considered the hepatitis C mild. Exhibit 13.... Treating physician notes of 1/15/2007 to

7/30/2007 indicate treatment for headaches, narcotic withdrawal, anxiety, and hepatitis C. Question of drug seeking behavior. No history of substance abuse. Note of 7/30 indicates gait and affect normal. Alert and oriented. Judgment and insight intact. Thought processes logical and sequential. Exhibits 61-71.

... History of repair by coiling of a brain aneurysm in 2005. Emergency room records from 2007, 4/29/07 and 3/17/07 show exam normal. Discharged with impression of acute cephalgia. CT of head reports normal findings with exception of post-coiling of an anterior communicating artery aneurysm performed in 2005. MRI of brain demonstrated generalized cerebral atrophy. MRI of lumbar spine demonstrated degenerative changes in the lower spine with slight anterior subluxation of L4/L5. Exhibits 19, 22, 36, 37.

Analysis: Due to headache, question of anxiety, substance abuse, would have difficulty with skilled work that would require concentration and the ability to focus on a task. Should be capable of performing simple unskilled work. No evidence of a mental impairment that would pose significant limitation.

(16) The 2/4/08 subsequent SHRT decision is adopted and incorporated to the following extent:

Claim returned... Newly submitted evidence and Exhibits: A 1/08 letter from a PA states claimant totally disabled and incapable of working due to previous cerebral aneurysm and anxiety and depression with side effects from medication. Exhibit 8.1. Paperwork indicating he was being treated at [REDACTED] for depression was submitted with no evaluation or assessments. Exhibit A3-4.

Analysis: PA is not a valid medical source per 20 CFR 416.913(a)(b). Only an M.D., D.O., or Ph.D. may make a medical source statement. No controlling weight will be given to the PA's statement. Additionally, PA's statement is inconsistent with the great weight of medical evidence, which shows he can perform at least unskilled work on a sustained basis.

(17) Claimant's extensive medical file, which consists of almost 500 exhibits, contains a high percentage of radiology reports finding normal and/or no abnormal findings.

(18) A DHS-49 completed 7/30/07, indicates that claimant can stand and/or walk at least 2 hours out of an 8-hour workday; occasionally lift 50 pounds or more. Claimant has no

restrictions with regards to his repetitive actions for his hands/arms and feet/legs. Claimant has difficulty with sustained concentration, comprehension, and interaction. Exhibit 12.

(19) Exhibit 13, is a letter from claimant's treating physician which is undated and not given substantial weight.

(20) Lab tests from 7/2/2007 show high ALT and AST. Exhibit 47.

(21) Numerous exhibits show addiction to cocaine and other drugs. See Exhibits 49, 54, 58. Exhibit 62 indicates drug seeking behavior and history of narcotic addictions. Cocaine and OxyContin abuse per Exhibit 70. Narcotic addiction withdrawal. Exhibit 73. Addiction and dependence and methadone. Exhibit 75. Addiction to OxyContin. Exhibit 77. Narcotic addiction and withdrawal. Exhibit 79. High dose of OxyContin as a drug of abuse. Exhibit 80. Significant history of narcotic addiction and withdrawal. Exhibit 90. See remaining Exhibits in 1-477.

(22) Claimant testified at the administrative hearing that he does not need any assistance with his bathroom and grooming needs.

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).

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. 20 CFR 416.920(f).

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(g). After a careful review of the credible and substantial evidence

on the whole record, this Administrative Law Judge finds that claimant does not meet statutory disability on the basis of Medical Vocational Grid Rule 203.21 as a guide.

In reaching this conclusion, it is noted by this Administrative Law Judge that there is agreement with the analysis of the State Hearing Review Team's decisions of 12/12/07 and 2/4/08. The great bulk of the medical documentation does not show a disabling impairment as required by 20 CFR 416.913(b), .913(d), and .913(e). As already noted by SHRT, the statement by the PA 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)(5).

Also noted is that claimant is capable of engaging in medium work pursuant to the statement by claimant's treating physician on the 49 form dated 7/3/07. It is noted that Exhibit 13 is not dated and will be given less weight. Moreover, the inconsistency will be resolved in accordance with the great weight of the medical evidence taken as a whole in the nearly 500 pages of medical evidence in this file. Statutory disability is not shown and thus, the department's denial is upheld.

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 11, 2009

Date Mailed: May 12, 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

cc:

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