

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: 2008-10627
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 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 May 6, 2008. Claimant was represented at the administrative hearing by

[REDACTED]

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 10/22/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 11/28/07, the MRT denied.

- (4) On 11/30/07, the DHS issued notice.
- (5) On 12/10/07, claimant filed a hearing request.
- (6) Claimant has an SSI application pending with the Social Security Administration (SSA).
- (7) On 3/21/08, 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 6/15/09 SHRT once again denied claimant.
- (8) As of the date of application, claimant was a 45-year-old female standing 5' 5" tall and weighing 302 pounds. Claimant's BMI Index is 50.2. Claimant is classified as morbidly obese. Claimant has 14 years of education, studying computer information and business in 1987. Claimant has an associate's degree.
- (9) Claimant does not have an alcohol/drug abuse problem or history. Claimant does smoke cigarettes. Claimant testified that she smoked two packs per day up to approximately six months prior to her application. Claimant has a nicotine addiction.
- (10) Claimant is not currently working. Claimant last worked in August of 2007, where she was laid off. Claimant's work history is unskilled, working primarily in factory/production work.
- (11) Claimant alleges disability on the basis of panic attacks, PTSD, bi-polar, diabetes Type 2, obesity, COPD, lower extremity osteoarthritis issues, back problems, depression.
- (12) The 3/21/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Medical Summary... Claimant treated for bi-polar disorder at CMH with normal mental status examinations. Daily activities performed independently. Exhibits 14-15, 44-47.

11/07 physical exam notes tenderness lumbar spine and lower thoracic spine in paraspinal area. No assistive device used for

ambulation. Other body systems functioning normally. Exhibit 7. Functional restrictions assessed were not objectively or clinically documented. Exhibit 7.

Analysis: Back pain reported. No assistive device for ambulation. No problems with heart or lungs reported. Treatment for mood swings. Mental status exams normal. Daily activities performed independently. Assessed that claimant retains the functional capacity to perform work at least medium unskilled work.

(13) The 6/15/09 subsequent SHRT decision is adopted and incorporated by reference to the following extent:

3/03 x-ray of left knee showed early osteoarthritis. X-ray of thoracic spine on 11/07 shows mild degenerative changes. Sleep study done confirming obstructive sleep apnea and C-PAP machine prescribed. Denied per 203.28.

(14) A 3/27/08 x-ray of the left knee showed early osteoarthritic changes.

(15) The April, 2008, polysomnogram contains the following impression: "The findings indicate obstructive sleep apnea which is moderately severe. Considering patient's morbid obesity, she is expected to benefit from the use of a C-PAP and will be scheduled for a C-PAP titration study.

(16) An x-ray report in November 2007 of the thoracic spine concludes negative lumbar spine.

(17) A mental residual functional capacity assessment completed 10/26/07 contains not significantly limited in 10 categories; moderately limited in 8; markedly limited in 2.

(18) A CMH evaluation of February 2007 states in part that claimant has plans for the future to try and get a permanent job.

(19) A radiology report of August 2007 concludes left arm strain.

(20) A physician report of July 2007 finds right hand contusion.

(21) Claimant testified at the administrative hearing that she does not need any assistance with her activities of daily living or her 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).

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addiction 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. 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 the evidence does not support finding statutory disability on the basis of Medical Vocational Grid Rule 203.28 as indicated by SHRT, and in the alternative, 202.20 for the reasons set forth below.

In reaching this conclusion, it is noted that claimant alleges disability on the basis of multiple impairments. Among those multiple impairments, claimant indicates that her obesity and COPD make her unable to work. Claimant continues to smoke and has a nicotine addiction. Approximately six months prior to the administrative hearing, claimant indicated that she had been routinely smoking two packs of cigarettes per day. Claimant's nicotine addiction and obesity is reflective of the congressional stance as these behaviors having strong behavioral components under statutory disability. These are also the types of behaviors which reflect the "individual

responsibility” position found in the *SIAS v Sec. of Health and Human Services*, 861 F2d 475 (6th Cir 1988) decision:

The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriad of choices in life, and the choices we make, whether we like it or not, have consequences. If claimant in this cases chooses to drive himself to an early grave, that is his privilege--but he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

As noted by *SIAS*, claimant’s lifestyle choices do not reflect someone who believes that they are not capable of working due to independent medical conditions. Statutory disability requires a showing of a material medical condition which affects the ability of an individual to engage in work or work-like settings.

With regards to claimant’s alleged mental impairments, these are simply not severe. The mental residual functional capacity assessment does not indicate a severe mental impairment which affects claimant’s ability to engage in work or work-like settings. While claimant obviously has some issues, these do not rise to statutory disability.

With regards to claimant’s diabetes, this is being controlled by medication.

With regards to claimant’s extremity problems, i.e. her back and legs, the medical evidence of record shows early osteoarthritic changes. There is no indication that these findings interfere with claimant’s ability to work. All individuals experience some form of degeneration; statutory disability does not recognize normal aging as statutorily disabling.

With regards to claimant’s lumbar spine, the radiology report was negative. Claimant’s left arm strain is not shown to affect her ability to engage in work. Claimant had a right-hand contusion which also should have been corrected and not interfere with her ability to engage in work.

Taken as a whole, there is insufficient evidence to show statutory disability. 20 CFR 416.913.

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, 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.

Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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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