

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: 2008-8651
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 27, 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 on March 27, 2008.

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 10/3/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 10/23/07, the MRT denied.
- (4) On 10/26/07, the DHS issued notice.

- (5) On 11/8/07, claimant filed a hearing request.
- (6) Claimant has an SSI application pending with the Social Security Administration (SSA).
- (7) On 2/22/08, 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 4/11/08 SHRT once again denied claimant.
- (8) As of the date of application, claimant was a 41-year-old male standing 5' 7" tall and weighing 258 pounds. Claimant's BMI is 40.4, classifying him as morbidly obese under the BMI Index.
- (9) Claimant testified that he does not consume alcohol, but he does have an alcohol abuse history. Contrary information indicates a polysubstance abuse history. See Exhibit 18. As of the date of application, claimant has a 28-year, pack-a-day smoking history.
- (10) Claimant has a driver's license. Claimant testified that he drives short distances.
- (11) Claimant is not currently working. Claimant lists his work history as working until April, 2007, at an assessment center and as a rehab counselor. Claimant has also worked as a mechanic. Claimant's work history is skilled.
- (12) Claimant alleges disability on the basis of fibromyalgia and depression.
- (13) The 2/28/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Physical: 9/07 5' 7", 250 pounds. Blood pressure 140/80. Memory intact, lungs clear, gait normal, range of motion full in all joints with no neurological deficits. Exhibits 13-15.

Mental: In 9/07 reports no mental health treatment. Memory intact and mental status exam normal. Diagnosed with adjustment disorder. Exhibits 16-18. No evidence of a disabling physical or mental impairment.

(14) The subsequent 4/11/08 SHRT decision is adopted and incorporated to the following extent:

... Newly submitted evidence: In 11/07 primary care physician wrote a letter indicating claimant was totally disabled and unfit for any type of employment due to pain, headaches, and possible multiple absenteeism due to pain, back pain, high blood pressure, moderate obesity, possible sleep apnea, and migraines. Exhibit A1. Only objective data presented with this letter was a blood pressure of 160/90. Recent lab showed elevated triglycerides and mildly elevated blood glucose.

Analysis: Treating physician has given an opinion that the claimant is totally disabled and unfit for any type of employment due to pain, headaches, and possible multiple absenteeism due to pain, back pain, high blood pressure, moderate obesity, possible sleep apnea, and migraines. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence per 20 CFR 416.927c(2)(3)(4) and .927d(3)(4)(5), will not be given controlling weight. Collective objective medical evidence shows that claimant has no severely disabling mental or physical impairment that would preclude basic work activity.

(15) Claimant testified at the administrative hearing that he has been diagnosed with Diabetes Type II. Claimant testified he sleeps 16 hours a day. Claimant watches TV in his spare time. There was testimony on the record that claimant cannot eat healthy as he must use a microwave to eat.

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). As noted by the SHRT decision, SHRT denied claimant at Step 2 on the grounds that claimant simply did not have a severe impairment. Ruling ambiguities in claimant's favor and taking into account that this is a *de minimus* standard, this Administrative Law Judge will continue the analysis.

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 can return to past relevant work on the basis of the medical evidence. Claimant's problems seem in large part related to claimant's obesity. As already noted, there is no obesity listing. Congress removed the obesity listing at the same time that the alcohol and drug abuse was removed, reflecting a strong cultural view that there is a strong behavioral element. Absent other disease states or independent disease states, obesity will not rise to statutory disability.

Claimant's 3/25/04 MRT of the brain concluded normal MRI.

Claimant's MRI of the cervical spine showed a normal imaging study of the cervical spine.

Claimant's MRI of the lumbar spine without contrast showed dissection of the L5-S1 disc; mild facet hypertrophic changes present at the L5-S1 level. There is no indication that this rises to statutory disability or impedes claimant's ability to do his past work.

It is noted that claimant takes medication which a physician opined aggravates claimant's sleep issues.

The law classifies claimant as a very young individual at 41. Claimant's medical evidence taken as a whole fails to meet the statutory requirements found at 20 CFR 416.913(b), .913(d), and .913(e). The burden of proof is on claimant pursuant to 20 CFR 416.912(c). Conclusions without corroborating evidence as required by the law is not given substantial weight pursuant to 20 CFR 416.927. This Administrative Law Judge finds that the MSO comments in the narrative letter in the new medical is inconsistent with the great weight of the objective medical evidence pursuant to 20 CFR 416.927. 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: July 7, 2009

Date Mailed: July 7, 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:

