

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: 2008-9434  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 5, 2008  
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. 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 June 5, 2008, in Jackson County DHS in Jackson, Michigan.

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 10/22/07, claimant applied for MA-P with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 11/5/07, the MRT denied.
- (4) On 11/8/07, the DHS issued notice.

(5) On 11/21/07, claimant filed a hearing request.

(6) Claimant testified under oath that she has an SSI application pending with the Social Security Administration (SSA). To date, claimant has not informed the department nor has the department informed the undersigned ALJ that there has been a final disposition on claimant's SSA case. If so, a final disposition may change the outcome of this decision.

(7) On 3/5/08, the State Hearings 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 2/20/09 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 46-year-old female standing 5'9" tall and weighing 160 pounds. Claimant has a high school education.

(9) Claimant testified that she does not smoke.

(10) Claimant testified that she does not have an alcohol abuse problem or history. Claimant subsequently testified that she has a DUI on her record. Claimant does have a drug abuse history and continues to go to court-ordered NA. Claimant used in 2002, with a relapse in 2005.

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

(12) Claimant is not currently working. Claimant last worked in wood sculpturing. Claimant lists her last work in 2005 in the evidentiary packet as a grounds keeper and landscaping. Claimant also indicates that she worked in a gas station convenience store, without any dates listed. See Claimant Exhibit A, p. 21. Claimant has repeatedly indicated on the evidence that she has not worked since the alleged onset of the current claim for disability-- October 3, 2007. There is no documentary evidence that claimant has worked since 2005.

(13) Claimant alleges disability on the basis of MVA in [REDACTED] on [REDACTED], where she suffered multiple injuries including front lobe SAH; occipital condyle fracture and C1,

C2 and C5 fractures; T5 burst fracture and T6 fracture; nasal bone and bilateral maxillary fractures; right clavicle fracture; right internal carotid artery dissection. See Exhibits 8-15.

(14) Claimant received referrals for consults and treatment with neurosurgery, vascular surgery, orthopedics, physical medicine and rehabilitation, physical therapy, psychiatry, and plastic surgery. See Exhibit 16.

(15) Claimant transferred her care to Michigan. On [REDACTED] completed a statement indicating claimant was suffering from multiple fractures from an MVA. The physician states: "She does need to have surgery before a healing process can begin. We do expect her to be disabled to work for at least a year, at minimal..."

(16) [REDACTED] on

[REDACTED] wrote the following letter:

[Claimant] was involved in a motor vehicle accident in [REDACTED]. As a result, she has a C1-C2 occipital condyle fracture and a T6 vertebral body fracture. [Claimant] will require treatment for her condition for at least one year.... Claimant Exhibit B.1.

(17) [REDACTED] wrote correspondence indicating he is claimant's primary care physician, stating in part:

... I am only able to provide limited access to needed specialty care she requires following significant trauma (fracture of cervical spine, thoracic vertebrae and skull). She was denied Medicaid coverage which she must have if I am able to get her to the appropriate specialist. Her condition will not resolve, even with appropriate care, for the next several years. I believe she was denied because it was assumed her problems would not resolve sooner.... Claimant Exhibit B.2.

(18) On 3/4/08, SHRT denied claimant on the basis of duration. Pursuant to the record being held open, on 2/20/09 SHRT also denied claimant on the basis of duration.

(19) [REDACTED] claimant had a mental status exam, RAT-3 and reading and math evaluation completed by [REDACTED]. [REDACTED] indicates motor activity slowed; mechanical,

deliberate speech pattern noted, transposes letters and numbers, noticeably slow processing and inefficient when recalling multi-step task instructions; patient uses reminder lists with success for ADLs completion; becomes confused by the end of the day; as evaluation progressed, after one half hour, speech patterns slowed notably. Axis I: Cognitive decline 294.9; history of polysubstance dependence 304.80. Requires assistance with money management and user lists.

(20) An FIA-49 completed [REDACTED] indicates that claimant can never lift any weight at all, has limited physical limitations, cannot stand or walk for more than 2 hours out of an 8-hour workday and can sit for less than 6 hours out of an 8-hour workday; wears a neck brace; cannot use her hands/arms for any repetitive hand motions including grasping, reaching, pushing, pulling, and fine manipulation. Claimant has mental limitations that are limited with regards to social interaction and sustained concentration. Exhibit 18.

#### 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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

These federal guidelines state in 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.

...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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

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. As noted in the Findings of Fact, SHRT denied on the basis of duration.

This Administrative Law Judge has reviewed the entire medical evidentiary packet and concludes that with recommended treatment, claimant's impairment(s) may not meet the duration requirement. However, case law carves out an exception where an individual cannot afford treatment. See *McKnight v Sullivan*, 927 F2d 241 (6<sup>th</sup> Cir 1990). *McKnight* indicates that a trier

must take into account the ability of the applicant to afford necessary treatment to remedy the disability. Where treatment cannot be afforded, there must be an assessment made as to whether the condition will continue to be severe and meet the duration requirement.

This Administrative Law Judge has reviewed claimant's physicians' reports. These physicians clearly indicate by a series of three separate letters that absent the "required treatment for her condition" she will not be able to resolve the medical problems from "multiple fractures from her MVA... She does need to have surgery before a healing process can begin. We do expect her to be disabled to work for at least a year, at minimal." [REDACTED]

[REDACTED]. On [REDACTED] further substantiates those views in essence by stating that without medical coverage which claimant must have, he is unable to get her "to the appropriate specialist. Her condition will not resolve, even with appropriate care, for the next several years. I believe she was denied because it was assumed her problems would resolve sooner." For these reasons, this ALJ finds that claimant meets Step 2 and continues 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(e).

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(f).



After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant could not do a full range of sedentary work pursuant to Medical Vocational Grid Rule 201.00(h). As noted by SHRT, claimant's condition has improved since the accident. However, claimant continues to have major physical problems, which when combined with the mental slowness, significantly impairs her ability to do any type of work.. Claimant's inability to engage in substantial gainful activity despite some improvement from the accident is supported by three different physicians along with the supporting evidence submitted by the physicians. Claimant also needs treatment which she cannot afford without assistance with regards to an orthopedic specialist, therapist, plastic surgeon, vascular surgeon, and psychiatry. As already noted, *McKnight, supra*, is applicable as noted above.

For these reasons, and for the reasons stated above, the department's actions are reversed.

It is noted that claimant spent some time at the administrative hearing objecting to the acronym "MVA." Claimant's objection centers on the fact that she had a motorcycle accident and not a motor vehicle accident. Claimant's own physician uses the acronym "MVA." Claimant's objections are irrelevant.

It is also noted that claimant's drug abuse history and/or any relapse is not material to her disability. 20 CFR 416.214; 416.935 et al.

#### 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 incorrect.

Accordingly, the department's decision is REVERSED. The department is ORDERED to make a determination if claimant meets the non-medical criteria for MA. If so, the department is ORDERED to open an MA case from the time of application and issue any supplemental

benefits to claimant. The department is ORDERED to review this case in accordance with its usual policy and procedure.

/s/  
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Janice G. Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: February 27, 2009

Date Mailed: March 2, 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.

JGS 

cc: 