

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: 2008-12741

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 2008

Kent 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 May 13, 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 10/5/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 10/30/07, the MRT denied.

(4) On 11/5/07, the DHS issued notice.

(5) On 1/16/08, claimant filed a hearing request.

(6) Claimant testified that she has applied on at least three occasions to the Social Security Administration and received final determinations from on an application at least three times. Claimant alleges that her conditions have worsened.

(7) On 4/4/08, the State Hearing Review Team (SHRT) denied claimant.

(8) The undersigned Administrative Law Judge was on a scheduled leave of absence from 8/1/08, returning full time 2/1/09. None of the ALJ's pending cases were reassigned while on leave; no protected time afforded before or after leave for issuing decisions.

(9) As of the date of application, claimant was a 44-year-old female standing 5' 3 1/2" tall and weighing 160 pounds. Claimant's BMI Index is 27.5, classifying claimant as overweight under the BMI Index. Claimant has an 11th grade education.

(10) Claimant testified that she does not currently have any alcohol/drug abuse problems. Claimant has a history of alcohol and drug abuse. Many physician reports and the medical evidence indicate a reluctance on the part of the physicians to prescribe any narcotics due to the history of drug addiction.

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

(12) Claimant is not currently working. Claimant last worked in 2003. Claimant's work history is unskilled.

(13) Claimant alleges disability on the basis of history of left shoulder surgery, right wrist and elbow surgery, right knee scope, left breast biopsy, left knee scope; history of cocaine, marijuana and alcohol abuse reported, quitting in 2004. Exhibit 24.

(14) In 6/07, claimant had an MRI of the left knee which revealed a small tear in the posterior horn of the medial meniscus. MRI was otherwise unchanged from 2005.

(15) A 6/07 exam showed no evidence of effusion or warmth. Had fairly good range of motion in the left knee but extremes of motion caused discomfort. Diagnosis: mild osteoarthritis of the left knee, mild arthritis of the right knee, and status-post arthroscopy of the right knee.

Exhibit 138.

(16) In 7/07, claimant went to ER for left shoulder pain. Exam revealed well healed surgical scar, no point tenderness. Limited ROM of shoulder due to pain. Good ROM of the left wrist with a normal exam. Ambulated without difficulty.

(17) In 8/07, symptoms reported included chronic pain in the left shoulder and right wrist along with bilateral knee pain. No distress but affect was depressed. Exhibit 24.

(18) A DHS-49 form completed by orthopaedic doctor dated 9/07, indicates claimant has pain along the joint line of the knee. Exhibit 136. Doctor stated there are no physical limitations. Exhibit 137.

(19) A 10/07 report of abdominal pain showed on exam some tenderness in right upper quadrant. No focal or neurological deficits. Exhibit 58. Claimant returned to ER later in 10/07 after she had just been discharged with a diagnosis of gastritis. Exam revealed tenderness in the abdominal area. Musculoskeletal exam showed no swelling of the distal extremities. Grossly intact regarding neurological assessments. Exhibits 51-52.

(20) SHRT concludes with its analysis that claimant has chronic pain and goes to the ER frequently. History of substance abuse. No significant abnormalities on exam. Orthopaedic doctor indicates no physical limitations. More recent abdominal pain complaints at the hospital resulted in gastritis diagnosis.

(21) A 9/14/04 evaluation indicates claimant has a strong history of drug dependence and the physicians are reluctant to use narcotics in her treatment due to the drug dependence. Exhibit 22.

(22) The September 2004 evaluation indicated bilateral shoulder pain with left shoulder being worse. History of depression secondary to chronic pain syndrome and drug abuse.

Exhibit 22.

(23) Claimant has had numerous MRIs and radiology reports indicating mild degenerative changes. See Exhibits 27, 28, 29, 34. Exhibit 30 indicates no acute processes.

(24) Exhibit 52 recommends a low fat diet.

(25) An MRI of 8/07 indicates degenerative changes.

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 203.25 for the reasons set forth below.

In reaching this conclusion, it is noted that a drug and alcohol history will not entitle an individual to statutory disability. Congress removed drug and alcohol where it is material. Even so, claimant does not have a material or alcohol problem.

Regarding claimant's complaints of chronic pain, this is not corroborated by the medical evidence pursuant to the requirements under the federal regulations found at 20 CFR 416.927. Nor do they meet the general sufficiency requirements at 20 CFR 416.913. See also 20 CFR 416.929.

Regarding claimant's numerous radiology reports which find general degenerative changes, such changes are generally considered to be normal aging. Normal aging is not recognized as statutorily disabling absent indications otherwise as to a severe impairment which affects a person's ability normally at that age with regards to their capability to work. The record does not meet the sufficiency requirements to show the same and thus, these reports do not show statutory disability pursuant to 20 CFR 416.927.

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.

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: December 18, 2009

Date Mailed: December 21, 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:

