

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: 2008-15442
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 26, 2008
Wayne 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 conference hearing was held on June 26, 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 12/28/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 1/31/08, the MRT denied.
- (4) On 2/5/08, the DHS issued notice.
- (5) On 2/11/08, claimant filed a hearing request.

(6) Claimant has an SSI application pending with the Social Security Administration (SSA).

(7) On 5/6/08, the State Hearing Review Team (SHRT) denied claimant on the grounds of insufficient information requesting a complete physical exam and lumbar spine x-ray. The department collected the requested medicals and on 2/17/09, SHRT once again denied claimant.

(8) As of the date of application, claimant was a 46-year-old female standing 5' 4" tall and weighing 259 pounds. Claimant's BMI Index is 30.4, classifying claimant as obese. Claimant has a 12th grade education.

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

(10) Claimant testified that she only drives a motor vehicle when she needs to due to dizziness.

(11) Claimant is not currently working. Claimant last worked in 2007 in house cleaning. Claimant also identified running a day care for years. Claimant's work history is unskilled.

(12) Claimant alleges disability on the basis of back pain, numbness in legs and arms, loss of hearing in right ear, hypertension and incontinence, and diabetes.

(13) The 5/06/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.

(14) Pursuant to SHRT's request to have additional medical documentation obtained and an evaluation, on 2/17/09 SHRT once again denied claimant on the basis of Medical Vocational Grid Rule 202.20.

(15) A July 31, 2008 [REDACTED] completed on behalf of the DHS

states in part:

...States she has neuropathy... neck pain and back pain... States hypothyroidism, complains of rapid heart rate... Smokes ½ pack of cigarettes per day... Neurological, no evidence of cerebellar ataxia, Romberg negative, standing balance is good, Hoffman's negative, Babinski is downgoing, no evidence of knee or ankle clonus, no evidence of neurosensory deficit in both upper and lower extremities at present time. Musculoskeletal--cervical spine no evidence of increase of flattening of the cervical lordosis, no tenderness, no muscle spasm, Spurling's maneuver was not able to be done as she complained of pain, Tinel's and Phalen's were negative bilaterally, thorax spine and rib cage normal. No significant muscle atrophy. Tone and strength symmetrical, range of motion in attached chart, no evidence of flattening or increased lumbar lordosis. No tenderness, straight leg raising negative, no muscle spasm. Functional: Upper extremities able to get dressed, button clothing, tie shoe laces, pick up a coin, pencil and write. Claimant is diagnosed with cervical lumbar myositis with degenerative joint disease, hypertension, diabetes mellitus, dizziness, depression/anxiety, cardiac problems, obesity.

(16) A March 2008 routine MR found normal discs in the C2-C3, C4-C5, C5-C6, C6-C7, and C7-T1. Minimal disc bulging in the C3-C4. Exhibit 3.

(17) A 2/1/08 PA and lateral views of the chest found no evidence of active disease of the chest.

(18) Claimant testified at the administrative hearing contrary to other medical evidence that she does not smoke. Claimant is able to do household chores and does not need any assistance with her activities of daily living.

(19) Claimant's hearing request states back and legs and arm pain, going numb for over three years. Claimant also states "I have heart failure since I was 38 years old." Claimant states she is in much pain and has back problems for three years. Claimant's complaints and symptoms are not substantiated or corroborated by the medical evidence.

(20) Claimant testified that her diabetes is controlled with medication.

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). 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 can return to past relevant work on the basis of the medical evidence. In reaching this conclusion, it is noted that claimant does not have significant back trouble with regards to her complaints. Claimant stated in her hearing request that she has severe back problems and is in much pain. However, the MR of claimant's back showed normal discs throughout except for C3-C4 which showed minimal bulging discs. Ruling these ambiguities in claimant's favor, the analysis will continue.

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 202.20 for the reasons set forth below.

As already noted, the disc bulging is very minimal. However, this Administrative Law Judge ruled those ambiguities in claimant's favor with regards to the disc bulging at Step 4. It should be noted that normal degenerative changes are not considered statutorily disabling.

With regards to other problems, claimant indicates on her hearing summary that she has congestive heart failure. However, there is no medical evidence to support claimant's statement that she is in congestive heart failure.

With regards to claimant's diabetes, claimant personally testified at the administrative hearing that the diabetes is controlled with medication.

With regards to claimant's obesity, as already noted, obesity is not recognized as statutorily disabling due to the strong behavioral components as Congress removed obesity from the Listings of Impairments shortly after drug addiction and alcoholism was removed.

The claimant's other diagnoses as found in the report by [REDACTED] done on behalf of the department on July 31, 2008, does not contain information which would rise to statutory disability as defined under federal and state law. Claimant's complaints and symptoms are outweighed by the great weight of the medical evidence. 20 CFR 416.927. The medical evidence taken as a whole does not meet federal requirements found at 20 CFR 416.913; 20 CFR 416.929. For these reasons, and for the reasons stated above, 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: August 18, 2009

Date Mailed: August 18, 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:

