

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: 2008-6228

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 26, 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. Claimant was represented at the administrative hearing by [REDACTED] with [REDACTED]

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 8/30/07, claimant reapplied for MA-P with the Michigan DHS. Claimant's current medical file contains at least three prior applications--MRT denials for 11/22/06; 5/19/06; 12/7/05.

- (2) Claimant applied for three months of retro MA.
- (3) On 10/8/07, the MRT denied.
- (4) On 10/10/07, the DHS issued notice.
- (5) On 10/16/07, claimant filed a hearing request.
- (6) As of the date of the administrative hearing, claimant had an SSI application pending with the Social Security Administration (SSA). To date, has not informed the DHS as to the outcome of the application.
- (7) On 2/7/08, 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 5/16/08 SHRT once again denied claimant.
- (8) As of the date of application, claimant was a 56-year-old female standing 4' 10" tall and weighing 160 pounds. Claimant's BMI Index is 33.4, classifying claimant under the BMI calculator index as obese. Claimant has a high school education.
- (9) Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
- (10) Claimant has a driver's license and can drive an automobile.
- (11) Claimant is not currently working. Claimant last worked in 2002 at [REDACTED] where she testified that she was fired due to poor disposition. Claimant's work history is unskilled.
- (12) Claimant alleges disability on the basis of anxiety and heart problems.
- (13) The 2/7/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

... work history as a dish washer, line worker, pickle packer.

Medical Summary: Outpatient CMH records from 10/06 to 9/07 treatment for mood swings and depression with normal mental status exams and daily activity functioning normally. Exhibits 27, 40, 86-89.

Specialized heart testing reportedly normal functioning heart with an ejection fraction of 65%. Exhibits 106-109. Blood pressure is elevated and medically managed. No other severely restricted impairments were objectively or clinically documented. Denied per 203.14. Exhibits 193-194.

(14) The undersigned Administrative Law Judge was on a scheduled leave of absence from 8/1/08, returning full time 2/1/09. No pending cases reassigned while on the leave; no protected time afforded before or after the leave for issuing decisions.

(15) The 5/16/08 subsequent SHRT decision is adopted and incorporated to the following extent:

... Case remanded... New medical information... A 3/08 psychological exam noted no previous psychiatric hospitalizations. She reported a history of alcohol abuse in remission and indicated being in current treatment with a psychiatrist. Memory intact and mental status exam normal. Diagnosed with major depression and adjustment disorder. Denied per 20 CFR 416.920(e).

(16) Due to claimant's repeated applications and associated medical documentation, the record shows that claimant is deteriorating with regards to her mental state. Taken as a whole, claimant's most recent medical does not rise to statutory disability at this time.

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).

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. Taken as a whole, claimant's medical evidence does not indicate that claimant's mental and/or physical problems interfere with her ability to engage in work or work-like settings with regards to the type of work that she has done in the past pursuant to the requirements found at 20 CFR 416.913(b), .913(d), and .913(e). Federal and state law requires that symptoms and complaints be corroborated by the medical evidence sufficient to show statutory disability pursuant to 20 CFR 416.927(a)(1). These requirements further require very specific medical documentation with regards to complaints of pain. 20 CFR 416.929. Claimant has the burden pursuant to 20 CFR 416.912(c). Taken as a whole, claimant's medical evidence does not meet these federal requirements and state policies and thus, statutory disability is not shown at this time.

It is noted that due to claimant's numerous applications and reapplications with the State of Michigan, a comparison can be made and a view can be captured in her medical file which shows the status of her case over these years. It is interesting to note that a DHS-49D completed pursuant to one of her earlier application found virtually no evidence of any limitations and/or

“not significantly limited.” That compares to claimant’s more recent DHS-49D completed pursuant to the application at issue herein on 9/11/07. Claimant had moderately limited and markedly limited limitations, along with not significantly limited. However, taken as a whole, claimant’s status does not show a severe impairment which interferes with her ability to engage in past relevant work. Although already noted, claimant’s condition, if it continues to deteriorate, may show statutory disability at some time in the future. As the record states, the medical evidence taken as a whole and applied to the requirements under federal and state law do not rise to statutory disability.

It is also noted that claimant should have received a final Social Security determination by this time. If not, if she were to receive a favorable decision, the DHS would open a Medicaid case on her behalf. If not, claimant is not eligible. In the alternative, should the Social Security Administration reverse itself in the future, claimant would be eligible as Michigan administers the federal MA program.

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: November 4, 2009

Date Mailed: November 5, 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:

