

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

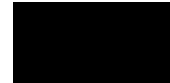


Claimant

Reg. No: 2008-8189

Issue No: 2009

Case No:



Load No:

Hearing Date:

March 25, 2008

Monroe 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 25, 2008.

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 8/3/07, claimant applied for MA-P with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 10/25/07, the MRT denied.
- (4) On 10/29/07, the DHS issued notice.

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

(6) Claimant has had a final determination for SSI by the Social Security Administration (SSA). Claimant testified that she intends to reapply. Claimant testified that her conditions have worsened. Jurisdiction is proper.

(7) On 2/19/08, 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 5/6/08 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 46-year-old female standing 5' tall and weighing 156 pounds. Claimant has a 9th grade education.

(9) Claimant does not have an alcohol/drug abuse problem or history, but claimant does smoke a pack of cigarettes per day and has a nicotine addiction.

(10) Claimant has a driver's license but testified that she does not drive due to anxiety and panic attacks.

(11) Claimant is not currently working. Claimant last worked in May, 2007 in a cosmetics division with [REDACTED] Claimant is currently taking care of a 78-year-old gentleman in exchange for room and board. Claimant cooks, cleans, and takes care of him. He assists her with the shopping.

(12) Claimant alleges disability on the basis of shoulder impingement, anxiety, panic attacks.

(13) The 2/19/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.

(14) The 5/6/08 subsequent SHRT decision is adopted and incorporated by reference herein.

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).

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). It is also noted at Step 4, a full assessment of an alleged mental impairment must be made. Claimant has [REDACTED] notes from February 2008 indicating treatment for bi-polar disorder with no abnormal mental status findings. A prior psych evaluation of 10/6/07 reported claimant complained of a long history of depression. However, on examination claimant had good grooming and hygiene, and was spontaneous, logical, and goal-directed. Claimant was shown to have good memory. Claimant was given a diagnosis of dysthymia, rule out major

depressive disorder, rule out mood disorder secondary to general medical disorder, and rule out panic disorder with agoraphobia. There is no indication that the mental conditions would affect the ability to perform unskilled work although claimant may have difficulty with skilled work. Under federal statutory disability, there must be a showing that an individual is not able to work, based upon the medical evidence, doing any kind of work.

In this case, this ALJ finds that claimant can return to past relevant work on the basis of the medical evidence. It is noted that claimant's past relevant work was doing makeup work for Estae Lauder. It is also noted that claimant currently, in exchange for room and board, takes care of an elderly gentleman. Claimant engages in many laborious tasks of physically caring for this gentleman along with the housework, cooking, cleaning, etc. In actuality, claimant's current work is more physically intensive than her past relevant work. However, as claimant's current arrangement is not a situation where she is paid actual wages, and, it is not clear as to whether it could be considered an employment arrangement and/or a work arrangement with "special accommodations," this Administrative Law Judge will rule the ambiguities in claimant's favor and continue that analysis.

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 per Medical Vocational Grid Rule 202.17 as a guide for the reasons set forth below.

It is noted that the consult evaluation of 10/06 reported clear lungs, normal heart sounds. Claimant had marked limitations of motion in her left shoulder. Claimant's wrist joint movement was normal. Claimant's right upper extremity was normal, and gait was normal. Moreover,

claimant was able to bend, stoop, and squat with no problems. Claimant was considered to be alert, oriented, and cooperative.

Regarding claimant's physical exertions, claimant's most severe problem is her shoulder as there documentation that she has a tear. However, the record taken as a whole does not contain medical evidence which would indicate that the shoulder problems interfere with claimant's ability to engage in work pursuant to the requirements found at 20 CFR 416.913, .927, .928.

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 19, 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:

