

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: 2008-9170

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2008

Cheboygan 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.

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 7/25/07, claimant applied for MA-P and SDA with the Michigan DHS. Claimant has evidently applied numerous times with the Michigan DHS and has never been approved.
- (2) Claimant applied for three months of retro MA.
- (3) On 9/17/07, the MRT denied.

(4) On 9/19/07, the DHS issued notice.

(5) On 11/13/07, claimant filed a hearing request.

(6) Claimant testified at the administrative hearing that she had an SSI application pending with SSA and had a hearing scheduled for 6/23/08. Claimant has failed to indicate to the DHS if she has been approved. Claimant indicated that the exceptions were met in that she had new impairments as compared to previous applications. Claimant's most recent denial would not meet any of the exceptions.

(7) On 3/15/08, the State Hearing Review Team (SHRT) denied claimant. The undersigned Administrative Law Judge was on an extended leave of absence that was scheduled 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.

(8) As of the date of application, claimant was a 47-year-old female standing 5' 3" tall and weighing 185 pounds. Claimant's BMI Index falls under the obesity range. Claimant has 14 years of education.

(9) Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes approximately one pack of cigarettes per day. Claimant has a nicotine addiction.

(10) Claimant does not have a driver's license based upon self testimony on the grounds that she had to surrender her license due to a motor vehicle accident in Canada.

(11) Claimant is not currently working. Claimant's work history is unskilled. Exhibit 39 lists her work history as laborer, cashier, line cook, and "cleaning up dog and cat shit."

(12) Claimant alleges disability on the basis of bipolar disorder, kidney disease, hypertension, migraines, strokes.

(13) The 3/15/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

A 10/11/06 psych exam indicates claimant has been receiving therapy through CMH social worker. No history of inpatient treatment. Noted to be sad and had numerous complaints. Noted to be oriented with good recall. Diagnosis of dysthymic disorder; major depressive disorder, recurrent; rule out bipolar disorder. Exhibit 67. 11/06/06 CMH exam noted mental status was unremarkable. Exhibit 123.

Lumbar spine x-rays of 3/5/07 within normal limits with mild degenerative changes noted at L3. Exhibit 132.

MRI of lumbar spine reports minimal disc bulging and degenerative changes present at the lumbosacral junction. Exhibit 131.

██████████ notes report atypical migraines with reported psychological overlay. ...

... 5/10/07 note reports five day history of weakness in arms and legs twitching uncontrollably. ... Physical exam was within normal limits with the exception of slight decrease in grip. Exhibit 167.

Note of 6/1/07 indicates hospitalization for multiple medical problems including acute renal failure in May. It was determined that she was on too many medications and was using a lot of pain medication... Reported a hard time emotionally without medication. Complained of aches and pains all over. ...

Analysis: Claimant has some minor physical problems that are exacerbated by her psychological overlay. Acute renal failure episode resolved with treatment and stoppage of medications. Mental status not significantly impaired although was sad with numerous complaints. Physical condition would not pose significant limitations. However, mental condition would likely make skilled work difficult for her to perform. Denied pursuant to Medical Vocational Grid Rule 204.00 as a guide.

(14) Claimant testified at the administrative hearing that she had no evidence that she could not work, although she had not reviewed her record. Claimant received an entire copy of the evidentiary packet for the administrative hearing.

(15) Claimant testified at the administrative hearing that she does not need any assistance with her bathroom and grooming needs and is able to take care of her daily activities.

(16) Claimant testified that she is constantly in pain.

(17) On 8/29/06, claimant had a mental residual functional capacity assessment done showing moderately limited in 6 out of 20 categories and no significant limitations in 14 categories. Exhibits 95, 96. Claimant had a subsequent mental residual functional capacity assessment done on 10/11/06, showing not significantly limited in 16 out of 20 categories; moderately limited in 4. See Exhibits 70, 71. Claimant's mental status is improving.

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.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy states:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

Relevant federal regulations are found at 42 CFR Part 435. These regulations provide:

“An SSA disability determination is binding on an agency until the determination is changed by the SSA.” 42 CFR 435.541(a)(b)(i). These regulations further provide: “If the SSA determination is changed, the new determination is also binding on the agency.” 42 CFR 435.541(a)(b)(ii).

In this case, claimant has apparently received a final determination from Social Security. Claimant did testify that she had had numerous denials from SSA but the impairments were different. Those prior denials would not be binding as the exceptions would apply. However, claimant's current application at the time of the administrative hearing would be binding. As claimant has not indicated that she was approved at the hearing, it is only reasonable to assume that she was denied. Under the above-cited authority, that denial would be binding.

However, this Administrative Law Judge does not have verification of the same. Thus, in the alternative, the sequential analysis will be applied.

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 addiction 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 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 is not eligible on the basis of Medical Vocational Grid Rule 204.00 as indicated by SHRT, for the reasons set forth below.

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.

In this case, claimant's mental residual functional capacity assessment does not indicate a severe impairment which would impede claimant's ability to engage in work or work-like settings. Claimant does have numerous complaints of pain which she testified to at the administrative hearing as well as to numerous providers. However, there is insufficient medical documentation to corroborate her complaints of pain as required under 20 CFR 416.929. Regarding claimant's degenerative changes, degenerative changes absence contrary medical are generally viewed as normal aging processes. Normal aging processes are not recognized as statutorily disabling.

Regarding claimant's kidney failure, medical evidence documents that this was due to claimant's excessive use of medications. The problem was resolved with the stoppage of medications.

Claimant's mental status is not significantly impaired based upon the medical evidence. Claimant generally has been diagnosed with a number of medical issues and complaints which do not rise to statutory disability, including high cholesterol, obesity, general fatigue. 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: November 6, 2009

Date Mailed: November 9, 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:

