

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg. No: 200921696

Issue No: 2009

A [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
Hearing Date: June 24, 2009
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. 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) 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 December 22, 2008, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On February 23, 2009, the MRT denied.
4. On February 24, 2009, the DHS issued notice.
5. On March 11, 2009, claimant filed a hearing request.
6. As of the date of the administrative hearing, claimant testified that she had filed an SSI application with Social Security Administration (SSA) during the same month as the application at issue herein with the DHS. Claimant testified under oath that the application was on appeal. Claimant alleged the same impairments. On April 15, 2011, the undersigned Administrative Law Judge received an updated SOLQ from Social Security Administration indicating claimant had an application filed on February 1, 2009. Based

upon the testimony at the administrative hearing, this would be a reapplication. However, since the dates are so close claimant's testimony must have been confused. The updated SOLQ indicates that the February 1, 2009 application was denied, appealed, and is still pending.

7. On May 19, 2009, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on April 7, 2010 SHRT once again denied claimant.
8. As of the date of application, claimant was a 47-year-old female standing 5'1½" tall and weighing 145 pounds. Claimant has some college.
9. Claimant testified that she does not have a current alcohol/drug abuse problem. Claimant testified that she had an alcohol history but has not drunk in five years. Claimant smokes one and a half packs of cigarettes per day. Claimant has a nicotine addiction.
10. Claimant has a driver's license and can drive an automobile.
11. As of the date of the application as well as just prior to the administrative hearing, claimant was working. Claimant testified she was working when she applied making approximately [REDACTED] per month. Claimant's income exceeded presumptive SGA 20 CFR 416.974(b)(3) for the year of application. Claimant is currently a full time student. Claimant's work history is sedentary skilled, light, semi-skilled. On Exhibit 6 claimant lists her work history as a social worker technician certificate, administrative assistant medical. Claimant lists her current job as human services—case aid.
12. Claimant alleges disability on the basis of secondary to degenerative disc disease and depression.
13. The May 19, 2009 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Medical summary: Normal range of motion of cervical spine. Sensation decreased in the left hand. Exhibit 11. Muscle strength normal in the lower extremities. Sensation intact. Gait and station normal. Exhibit 16. An electromyogram did not show lumbar radiculopathy or left carpal tunnel syndrome. Exhibit 20. MRI of the back showed protrusion. Exhibits 45-48.

Mental: Treated by therapist for depression. Therapist stated depression is due to back pain. Noted depression was not significantly limiting ability to perform or sustain activities. Exhibit 28-31.

14. The subsequent April 7, 2010 SHRT decision is adopted and incorporated to the following extent:

Case returned with new evidence...Does not alter prior determination...Evidence indicates retains capacity to perform a wide range of sedentary exertional work of a simple and repetitive nature.

15. Other medical evidence includes:

a) An independent medical evaluation completed December 15, 2009 a [REDACTED] of [REDACTED] concludes that claimant is suffering from degenerative disc disease...Patient does not demonstrate any objective evidence of herniated disc...I feel that she is restricted from heavy physical labor...Therefore I would place her at a sedentary work place where she could sit or stand at will, and maximize her lifting to 20 pounds at the maximum with no significant overhead work and no repetitive bending, stooping, lifting, pushing or pulling.

b) A June 12, 2009 independent evaluation [REDACTED] indicates claimant is independent with ADLs. Client has all the strength to do all the orthopedic maneuvers that the tingling and pain on the left leg are disquieting and bother her.

c) An eye care evaluation on April 27, 2009 indicates dry macular degeneration. Claimant was advised to quit smoking. A new eyeglass RX was given to patient.

d) A mental residual functional capacity assessment completed on January 13, 2009 indicates that out of 20 categories claimant is markedly limited in 1: "Due to back." Claimant is not markedly limited in any of the categories with regard to her mental impairment(s). Claimant is moderately limited in three categories out of 20.

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, the first step of the analysis does an assessment as to whether or not an individual is engaged in work or work-like settings. As noted in the Findings of Fact, claimant was working and earning wages that exceeded the presumptive SGA amount for her year of application pursuant to 20 CFR 416.974(b)(3). Federal law states that substantial work activity is work activity that involves doing significant physical activities. Work may be substantial even if it done on a part-time basis or if an individual does less, gets paid less, or has less responsibility than work previously done. 20 CFR 416.972(a).

Under the above-cited law, claimant is not eligible for statutory disability at Step 1 of the analysis.

In the alternative, the sequential analysis will be applied.

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

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evidence on the whole record, this Administrative Law Judge finds that claimant does not meet statutory disability, in the alternative, based on Medical Vocational Grid Rule 201.21 as a guide. In reaching this conclusion, it is noted that the law classifies claimant as a young individual. The law presumes that based upon claimant's biographical data that claimant is capable of doing sedentary work. The medical evidence in this case taken as a whole simply does not rise to statutory disability as it is defined under 20 CFR 416.912, .913. The department's actions are upheld.

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 G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 21, 2011

Date Mailed: April 21, 2011

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.

JGS/db

cc:

