

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: 2009-30643
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 2009
Gratiot 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 September 1, 2009.

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 4/7/09, claimant reapplied for MA-P and SDA with the Michigan DHS. Claimant has had numerous applications and reapplications with the Michigan DHS, including 6/27/09, Exhibit 22; 4/11/08, Exhibit 38; 5/25/07, Exhibit 89; 1/5/07, Exhibit 341; 11/22/04, Exhibit 379; 6/27/03, Exhibit 434; 12/2003, Exhibit 575, among others.

(2) Claimant did not apply for retro MA

(3) On 6/16/09, the MRT denied.

(4) On 6/18/09, the DHS issued notice.

(5) On 6/25/09, claimant filed a hearing request.

(6) Claimant has had numerous SSI applications and reapplications filed with the Social Security Administration (SSA) over many years. At the time of the administrative hearing, claimant did not have an application pending having received an adverse decision on 8/7/2008. On May 16, 2008, Judge Rhonda Craig denied claimant Medicaid and SDA with the DHS on the grounds of having received a final unfavorable decision from Social Security on March 5, 2008. Claimant testified that she has added more impairments since the 2002 decision.

(7) On 8/10/09, 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 11/9/09 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 34-year-old female standing 5' 3" tall and weighing 135 pounds. Claimant has a high school education.

(9) Claimant does not have an alcohol/drug abuse problem or history. Claimant testified at the administrative hearing that she does not "smoke anymore." Medical evidence in the file indicates that as of 2008, claimant was a smoker and it was recommended that she not smoke.

(10) Claimant has a driver's license and can drive a motor vehicle.

(11) Claimant is not currently working. Claimant last worked in 2000 in production work. Claimant has also worked as a CAN. Claimant's work history is unskilled.

(12) Claimant alleges disability secondary to chronic obstructive pulmonary disease, low back pain, diabetes, depression.

(13) The 8/10/09 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.

(14) The subsequent 11/9/09 SHRT decision is adopted and incorporated by reference herein.

(15) Claimant's new medical essentially does not change any prior medical evidence. Claimant was given time to have a New York Heart Classification form completed. The only form on record as new medical is completely blank with no physician's signature. A DHS-49 was also submitted as new medical, which is undated and does not contain a signature.

(16) Claimant's hearing request states that she is "on oxygen at night and I have two splices in a valve in my heart which causes me to have chest pains." A [REDACTED] statement by [REDACTED] states in part:

You had a stress test and an echocardiogram in our office on [REDACTED]. Your stress test was described as perfectly normal. Your echocardiogram showed a couple of very mildly leaking valves which do not require any intervention.... Exhibit 20.

(17) A [REDACTED] evaluation by [REDACTED], states in part: "Tobacco cessation would be of benefit. Her endurance appears to be relatively well preserved." Exhibit 34.

(18) An MRI on [REDACTED] concludes normal MRI of the lumbar spine. Exhibit 69.

(19) An EMG report of [REDACTED] concludes no evidence for lumbosacral radiculopathy, peripheral neuropathy or myopathy. Exhibit 78.

(20) Claimant also had a normal MRI of the lumbar spine. See Exhibits 79, 193.

(21) An [REDACTED] treadmill stress echocardiogram concluded fair functional capacity for age noted. Exhibit 198.

(22) An [REDACTED] radiology report of two views of the chest concludes normal chest.

(23) A [REDACTED] Mental Residual Functional Capacity Assessment shows claimant not significantly limited with no evidence of any significant limitation in 9 out of 20 categories; claimant is moderately limited in 8 categories.

(24) On [REDACTED], an [REDACTED] psychological report concludes claimant has been diagnosed under DISM IV with Axis I 300.81--undifferentiated somatoform disorder.

(25) Claimant's complaint of her symptoms far exceeds the medical evidence.

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, federal regulations with regards to prior SSI denials, state in part:

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, as already noted, claimant has had numerous applications with Social Security which have been denied. There is no evidence that claimant has received a favorable decision. In any case, claimant's most recent decision was unfavorable. Claimant has already had a decision by a DHS Administrative Law Judge which denied claimant on this basis. (May 16, 2008, Judge Rhonda P. Craig, Reg. No. 2008-6151).

While this decision could be binding, claimant is alleging additional impairments. Thus, this Administrative Law Judge will find that the exceptions apply and continue the sequential analysis.

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).

For alleged mental impairments, the fourth step is the last step of the analysis. With regards to claimant's alleged mental impairment, claimant has been diagnosed under DISM IV with Axis I 300.81--undifferentiated somatoform disorder. This disorder is described as:

- A. One or more physical complaints (e.g. fatigue, loss of appetite, gastrointestinal or urinary complaints).
- B. Either (1) or (2):
 - (1) After appropriate investigation, the symptoms cannot be fully explained by a known general medical condition or the direct effects of a substance...

In this case, under this DISM IV category, claimant has basically been diagnosed with a diagnosis which indicates that there is insufficient medical evidence to support claimant's complaints. Under federal statutory disability, such a diagnosis simply does not rise to statutory

disability as it is defined under the law--there is no evidence to show that claimant has any kind of an alleged mental impairment which interferes with her ability to engage in work or work-like settings. Thus, the analysis will continue with regards to claimant's alleged physical impairments, using 202.20 as a guide.

In reaching this conclusion, it is noted that claimant's copious medical file consisting of well over 1,300 exhibits does not show any significant, or arguably even severe impairment(s). Claimant's assessment of her heart condition, which may not be inaccurate, simply does not create a medical problem. Exhibit 20 indicates that there is "no intervention" which would require any treatment or necessity to do anything on behalf of claimant. Nor is there any evidence to indicate that this condition is even mildly limiting. The New York Heart Classification form is left blank. There is no medical evidence from before or new, which would indicate that it rises to statutory disability.

Claimant has had a number of other related stress tests which do not show problems.

Claimant has had a normal chest radiology report.

Claimant has had normal MRIs of the lumbar spine.

Taken as a whole, claimant's file does not rise to statutory disability and thus, the department's denial is 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 Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 24, 2009

Date Mailed: November 24, 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:

