

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 200932692
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: October 15, 2009
Shiawassee 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 on 10/15/09. Claimant was represented by [REDACTED]. The representative has a contractual relationship with the hospital where claimant was hospitalized and is attempting to collect on her past medical bills.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA)?

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 1/26/09, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 2 months of retro MA.
3. On 3/30/09, the MRT denied.
4. On 4/10/09, the DHS issued notice.
5. On 7/7/09, claimant filed a hearing request.

6. Claimant testified at the Administrative Law Judge that she has an SSI case pending with the Social Security Administration (SSA). On 9/15/10 the undersigned Administrative Law Judge received an SOLQ from the Social Security Administration indicating that there is no pending case.
7. On 8/26/09, the State Hearing Review Team (S HRT) denied claimant on the basis of Step 2 of the analysis—20 CFR 416.920(c).
8. As of the date of application, claimant was a 23-year-old female standing 5' 1" tall and weighing 178 pounds. Claimant is classified as severely obese. Claimant has some college.
9. Claimant does not have an alcohol problem or history. Claimant testified she does not currently have a drug problem. Medical evidence indicates that claimant has a history of Xanax abuse. Claimant has a history of smoking. Claimant has a nicotine addiction.
10. Claimant has a driver's license and can drive a motor vehicle.
11. As of the date of hearing, claimant had returned to work on 7/24/09 at 20 hours per week where she oversees a direct care arrangement for mentally handicapped. Claimant's representative asked for MA of a closed ended period of time—"from 10/08 to 9/09." Medical evidence is contrary. Exhibit 66 which is part of a hospitalization progress note indicates that the doctor instructed claimant: "to return to work and school Sunday, 11/9/08." Exhibit 66.
12. Claimant alleges disability on the basis of abdominal pain, chest pain, tachycardia, shortness of breath, back pain.
13. An emergency room report for acute gallbladder pain. Exhibit 7. An accompanying statement indicating past surgical history: "she had an appendectomy with one of her laparoscopies in [REDACTED] ... she has had a transesophageal echocardiogram. She had colonoscopies and EGDs all trying to work up her pain and functional problems." Exhibit 9.
14. Numerous documents indicate a history of migraines, history of fibromyalgia, gastroesophageal reflux disease, major depression. Exhibit 10.
15. An 11/27/08 progress note from [REDACTED] indicating that claimant had been treated for an addiction to narcotics. Exhibit 18.

16. An [REDACTED] hospital report for a psychiatric consult indicating generalized anxiety disorder and opiate dependence, Xanax abuse. The doctor recommended cutting back aggressively on the narcotics suspecting psychosomatic contribution. Another physician recommended restricted scheduling availability of Vicodin urging claimant to exercise, walk, and develop coping skills. It was suggested that claimant engage in didactic behavioral therapy. Exhibit 65.
17. An [REDACTED] assessment states in part that the doctor encourages claimant to take a shower, return to work and school on Sunday, November 9, 2008 and urging claimant that she could learn to love an 1800 calorie diet. Exhibit 66.
18. As of the date of the administrative hearing, claimant evidently was pregnant and receiving MA on that basis.

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).

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. As noted in the findings of facts, SHRT denied claimant on the basis of Step 2. Claimant's medical evidence does not show that she has significant disabling restrictions that meet federal and state statutory disability at Step 2 of the analysis. Claimant does not meet duration.

In the alternative, should the sequential analysis be applied, the undersigned Administrative Law Judge would concur with the SHRT denial on the basis of Medical Vocational Grid Rule 202.20 as a guide. In reaching this conclusion, it is noted that claimant is a very young individual both in fact as well as under federal law. At application, claimant was 23 years old. Claimant has some behavioral issues with regards to her obesity and drug problems. To the extent that these feed into any disability issues, *SIAS v Secretary of Health and Human Services*, 861 F.2d 475 (6th cir 1988) notes that claimant's smoking and/or obesity are the "individual responsibility" types of behaviors. In *SIAS*, the claimant was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised claimant to reduce his body weight. The court said in part:

...The claimant's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The claimant admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the claimant in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

In *SIAS*, the claimant was found not truly disabled because the secretary disregarded the consequences resulting from the claimant's unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F.2d 288, 289-90 (6th cir 1984).

For these reasons, and for the reasons stated above, the department 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.

Janice
Administrative

/s/ _____
Spodarek
Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 18, 2011

Date Mailed: January 19, 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.

JS/vc

cc:

