

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: 2009-13283

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 30, 2009

Genesee 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 April 30, 2009.

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 8/8/08, claimant applied for MA-P with the Michigan DHS.
- (2) Claimant applied for one month of retro MA.

- (3) On 11/21/08, the MRT denied.
- (4) On 11/26/08 the DHS issued notice.
- (5) On 1/14/09, claimant filed a hearing request.
- (6) Claimant has an SSI application pending with the Social Security Administration

(SSA).

- (7) On 3/6/09, the State Hearing Review Team (SHRT) denied claimant stating in

part:

... The claimant has a history of substance abuse. She also has a history of esophageal ulcer but is taking Xanax with good response. No problem maintaining weight as claimant is 258 pounds. Physical exam was otherwise unremarkable. Mental status showed her demonstrating affect to be largely within normal limits. Speech was understandable and grooming/hygiene were good. Exhibits 72-73.

- (8) As of the date of application, claimant was a 31-year-old female standing 5' 5" tall and weighing 260 pounds. Claimant testified that her 260 pound weight is normal. Claimant's BMI Index is 43.3. Claimant's BMI falls under the morbidly obese category. Claimant has a 10th grade education.

- (9) Claimant does not have an alcohol/drug abuse problem. Claimant testified she does not have an alcohol abuse history. Claimant testified that she does have a marijuana abuse history. Claimant smokes approximately two to three cigarettes per week.

- (10) Claimant does not have a driver's license. Claimant testified she never obtained a driver's license but received tickets for driving without a driver's license.

- (11) Claimant is not currently working. Claimant testified that her entire work history since 10th grade when she left school consists of working one year in a fast food restaurant and a few months in production work. Claimant's work history is unskilled.

(12) Claimant alleges disability on the basis of bipolar disorder and ulcers based upon Exhibit 26 completed by claimant at application. Claimant's hearing summary indicates that she also has "knee crunches." Claimant's witness from CMH testified that claimant has had extraordinary vomiting throughout many years.

(13) An [REDACTED] internist evaluation by [REDACTED] contains the following chief complaints by claimant: leg pain, ulcers. Impression: 1) Morbid obesity. 2) Major depression with associated bipolar disorder. 3) Recent development of plantar fasciitis involving the right heel. 4) History of esophageal ulcers now taking Xanax with some good response. A neurological orthopedic supplemental report by the physician assessing claimant's musculoskeletal system, osteoarthritis, and any spinal issues concludes basically normal ranges and ranges of motion throughout the entire exam. See Exhibits 8 through 11.

(14) On [REDACTED], claimant had a psychological evaluation by [REDACTED] who concludes with the recommendation that claimant continue to be involved in outpatient psychiatric treatment. Current diagnostic impression: 1) Bipolar disorder (by history) with anxiety attacks. 2) History of alcohol abuse and drug dependence. 3) Acid reflux, heel spurs. The exam was otherwise normal.

(15) Claimant is being treated by CMH.

(16) Claimant testified that she takes care of her bathroom and grooming needs, meals, laundry, and household chores.

(17) The department testified at the administrative hearing that claimant seemed very alert, responsive, and normal.

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). After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that claimant's physical impairments do not meet severity. First, with regards to the added on vomiting episodes, there is no allegation by claimant or indication that this was a problem. Her self-report when she had the internist evaluation failed to mention any issue regarding vomiting. This was an issue brought up by the witness. The medical evidence simply does not meet the sufficiency requirements found at 20 CFR 416.913 with regards to vomiting.

With regards to claimant's ulcers, the internist evaluation notes that claimant is on Xanax and that she is getting good results from this. There is no medical evidence to indicate that this was a disabling impairment.

Nor is there any medical evidence to indicate that claimant's plantar fasciitis meets the statutory disability criteria or the sufficiency requirements found at 20 CFR 416.913.

Regarding claimant's obesity, claimant testified that her weight is normal for her and does not pose a problem. SHRT notes that claimant has "no problem maintaining weight..."

Thus, with regards to claimant's alleged physical/exertional impairments, claimant does not meet statutory disability for the reasons set forth above. The analysis will continue with regards to claimant's alleged mental impairment(s).

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's mental impairments do 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, a full assessment of all the medical evidence in the file does not indicate that claimant could not return to her past relevant work on the basis of her mental impairment. The evidence does not show that claimant does not have the residual functional capacity to do other work. While claimant's [REDACTED] psychological evaluation does contain a diagnostic impression of bipolar disorder with anxiety attacks, there is no medical evidence which would indicate that this condition interferes with claimant's ability to engage in work or work-like settings. While claimant does not seem to live a very productive life, claimant also has the capacity to participate in activities of daily living without the interference of psychologically-based symptoms. Specifically, claimant prepares her own meals, cleans up after herself, does household chores, does her own laundry, and does not need any assistance with her bathroom and grooming needs.

For these reasons, and for the reasons stated above, statutory disability is not shown and thus, 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 Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 15, 2009

Date Mailed: June 16, 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

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