

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

IN THE MATTER OF:



Reg. No: 2009-25219  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date: 7/29/09  
Van Buren 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) applications and State Disability Assistance (SDA)?

**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 2/6/09 claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 4/14/09 the MRT denied.
- (4) On 4/17/09 the DHS issued notice.
- (5) On 4/23/09 claimant filed a hearing request.
- (6) Claimant does not have an SSI application pending with the Social Security Administration (SSA).

- (7) On 6/25/09 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 4/8/10 SHRT once again denied claimant.
- (8) As of the date of application, claimant was a 37-year-old male standing 5'10" tall and weighing 270 pounds. Claimant has almost completed a bachelor's degree in counseling.
- (9) Claimant testified he has no alcohol/drug abuse problem. Claimant testified he has a history of abuse approximately 3 years ago. Claimant smokes a pack of cigarettes a day. Claimant has a nicotine addiction.
- (10) Claimant does not have a driver's license do to having a DUI. Claimant has been in jail "several times", 9 – 10 months being the longest. Claimant was not assigned to any work duty in jail.
- (11) Claimant has not worked since 2001 when claimant received a substantial settlement from a motor vehicle accident. Claimant's prior work history included unskilled work in production, painter, assistant manager of a gas station, laborer, crew leader.
- (12) Claimant alleges disability due to diabetes, back problems, pelvis, hip pain.
- (13) The 4/8/10 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

New information: History of MVA in 2001. Later had surgery for disk herniation on the left. In 4/2009, claimant had a normal gait. Heel and toe walking did not reveal any weakness. Motor, sensory and reflex examinations normal in above extremities. Had significant loss of mobility in the right hip. There was significant atrophy of the right lower extremity. No weakness approximately or disability was noted. He had decreased sensation to pin prick and temperature in a stocking distribution of the left lower extremity. ...impairments do not equal or meet the intent of severity of Social Security listing. Medical evidence of record indicates claimant retains capacity to perform a wide range of work. ...Per medical vocational grid rule 202.20 as a guide. Exhibits 46 & 47.

- (14) At the Administrative Hearing, claimant testified he engages in all normal activities of daily living. Claimant also engages in gardening, riding his tractor, raking, shoveling, and performing other outdoor chores. He also does vacuuming and other household chores. See Exhibits 46 & 47.
- (15) Claimant stipulated at the Administrative Hearing that if he was trained he could do a desk job. Exhibit 14 collaborates claimant's ability to engage in sedentary work.

### **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.

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).

In this case, it appears that claimant had a previous Social Security application. It appears that there may have been a final determination. Pursuant to 42 CFR Part 435 the final disability SSA determination is binding on the Agency until it is changed by the SSA. 42 CFR Part 435.541(a)(b).

However, in this case, a prior binding decision by the SSA cannot be verified as claimant's current SOLQ indicates that claimant reapplied on 8/10/10. Thus, in the alternative, this Administrative Law Judge will continue with the sequential analysis.

Applying the sequential analysis herein, claimant stipulated at the Administrative Hearing that he is capable of a sedentary job if properly trained. However, claimant is not

currently working. Ruling these ambiguities in claimant's favor, the analysis will continue. 20 CFR 416.920(b).

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 concurs with the SHRT conclusion in finding claimant not meeting statutory disability on the basis of Medical Vocational Grid Rule 202.20 as a guide. In reaching this conclusion, it is noted that claimant stipulated that if he were properly trained, he could do a desk job. Medical Vocational Grid Rule 202.20 would take this into account. The law classifies claimant at age 37 as a very young individual. Moreover, claimant's educational training would make him a very good candidate for retraining. The law precludes such individuals under these facts from statutory disability. As the evidence does not support a finding of statutory disability, the department's denial is upheld. See also 20 CFR 416.913 (b), .913(d) and .913(e). See also BEM item 261.

### **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: 10/25/10

Date Mailed: 10/26/10

**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/le

cc:

