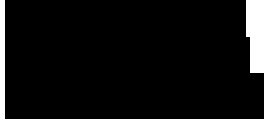


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 200926907
Issue No: 2009
Hearing Date: January 26, 2010
Genesee 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, an in-person hearing was held on January 26, 2010.

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 January 5, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On April 7, 2009, the MRT denied.
4. On April 16, 2009, the DHS issued notice.
5. On May 15, 2009, claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has applied for Social Security with SSA on approximately four occasions. Claimant indicated that he has been an Administrative Law Judge. Claimant has been denied on all occasions. Claimant is alleging the same impairments by way of self testimony, claimant has not reapplied.
7. On July 2, 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 November 29, 2010 SHRT once again denied claimant for insufficient information requesting additional tests. The undersigned Administrative Law Judge issued an Interim Order requesting claimant make a decision as to whether to have the additional assessments requested by SHRT signed on December 22, 2010, along with additional medical documentation to be collected. The undersigned Administrative Law Judge received additional medical documentation. The claimant did not appear for the appointment.

8. On June 24, 2011, SHRT once again denied claimant for a third time indicating that the new evidence was duplicates of evidence already in the file. Claimant failed to attend the appointment.
9. As of the date of application, claimant was a 43-year-old male standing 6'3" tall and weighing 195 pounds. Claimant has a high school diploma.
10. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes approximately one pack of cigarettes per day. Claimant has a nicotine addiction.
11. Claimant has a driver's license and can drive an automobile.
12. Claimant is not currently working. Claimant's work history is light, unskilled employment.
13. Claimant alleges disability on the basis of arthritis, degenerative disc disease, asthma, irritable bowel syndrome, carpal tunnel syndrome, radiculopathy.
14. Claimant testified at the administrative hearing that he does not need any assistance with his general activities of daily living.
15. The July 2, 2009 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein denied per 20 CFR 416.920(e).
15. The subsequent November 29, 2010 SHRT decision is adopted and incorporated by reference herein.
16. The June 24, 2011 third SHRT decision is adopted and incorporated by reference to the following extent:

Newly provided evidence is duplicate of that already in the file. SHRT denied this case on November 23, 2010 for additional evidence, consultative exam, which the claimant failed to attend. Analysis: Objective medical evidence continues to support findings of the MRT and the 7/2/09

SHRT decision. Claimant's past relevant work was of a light, unskilled nature, which falls within the limitations assigned by the MRT in their determination. Denied per 20 CFR 416.920(e).

17. Claimant has been diagnosed with diarrhea and heartburn.
18. Claimant's lumbar spine five views found bilateral spondylosis of L5. No evidence of listhesis; mild degenerative disc change.
19. Chest radiology report finds negative exam.
20. Medical evidence indicates claimant has been advised to exercise.
21. Claimant has had normal lab blood workups.

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.

First and foremost, prior to any substantive review, jurisdiction is paramount. Claimant as indicated by claimant at the administrative hearing, claimant has received a number of adverse decisions by Social Security. Claimant testified under oath that he is alleging the same impairments. Pursuant to 42 CFR 435.541 jurisdiction is not proper. Claimant has received a final determination. In the alternative, the sequential analysis will be applied. An alternative denial reason by the review of the whole evidence in this case is found in the December 22, 2010 Interim Order. Claimant failed to appear and failed to communicate with regards to his intent when the record was held open for insufficient information pursuant to the SHRT request. Claimant's case can be denied per 20 CFR 416.913. In the alternative, the sequential analysis will be applied.

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).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. In the alternative analysis pursuant to the fourth step of the sequential analysis requires a finding of not disabled pursuant to 20 CFR 416.920(f). The medical evidence supports finding that claimant retains the capacity to return to previous work.

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

While claimant has some medical issues, under statutory disability definitions, these do not rise to the level required under the federal and state law 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 G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 5, 2011

Date Mailed: July 5, 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:

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