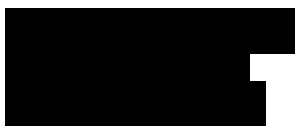


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 200926908
Issue No: 2009
Case No: [REDACTED]
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 in [REDACTED] 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 23, 2009, the DHS issued notice.
5. On May 15, 2009, claimant filed a hearing request.
6. Claimant testified at the administrative hearing that she has received two final determinations for an SSI application with SSA. On April 29, 2011, the undersigned Administrative Law Judge received verification that claimant was denied based on appeal by SSA on June 25, 2008. Claimant's application date was July 28, 2005. No application is pending. Claimant testified that at the administrative hearing that her impairments are worsening. Jurisdiction is shown.

7. On July 1, 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 October 4, 2010 SHRT once again denied claimant.
8. As of the date of application, claimant was a 38-year-old female standing 5'2" tall and weighing 220 pounds. Claimant's BMI is 40.2 classifying claimant as morbidly obese under the Body Mass Medical Index. Claimant has 13 years of education.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a driver's license and does drive an automobile.
11. Claimant is currently working. Claimant works at [REDACTED] approximately for six hours a shift, approximately 20 hours per week. Claimant indicated that due to her knee problem she could not do the job full time. Claimant stipulated at the administrative hearing that she could do a desk job full time if she could find a desk job. Claimant's previous work history is unskilled.
12. Claimant alleges disability on the basis of low back pain, arthritis, depression with anxiety.
13. On July 7, 2009, SHRT denied claimant on the basis that claimant did not meet or equal the severity. Alternatively claimant was denied per Medical Vocational Grid Rule 202.20.
14. The October 4, 2010 subsequent SHRT decision is adopted and incorporated to the following extent:

New information: Neural evaluation of 9/30/09 revealed normal tone, bulk and muscle strength of all muscle groups at 5/5. Deep tendon reflexes were 2+ in the upper extremities and decreased in both lower extremities. Gait normal, including tip toe, heel walk and tandem gait. Sensory findings revealed decreased sensation in a stocking/glove distribution in both lower extremities....EMG of upper extremities showed bilateral carpal tunnel syndrome without evidence of diabetic neuropathy....Pulmonary function study showed claimant was 5'1" and FEV1 1.4. No pulse bronchodilator values were given. 1/10 oxygen saturation at 100%. Reflex testing showed normal responses bilaterally. Normal strength in the finger and thumb muscles. 1.4 does not meet listing level. Claimant was obese. Had a history of depression secondary to loss of custody.

...Retains capacity to perform a wide range of simple skilled light work. In lieu of detailed work history, claimant will be returned to other work based on Medical Vocational Grid Rule 202.20 as a guide.

15. New medicals indicate claimant was seen for a sore throat. The doctor states claimant is a type 2 diabetic. High cholesterol. Negative for Hepatitis. Renal panel looks good. Observation is an obese, well-groomed, pleasant female. No acute distress. Lungs clear to auscultation bilaterally. Recommended regular exercise and stretches targeted toward her physical complaints.
16. Additional medicals indicate overweight female who is nicely groomed and in no acute distress. Heart was regular rate and rhythm, S1-S2. No murmurs noted. A January 26, 2010 chest radiology report concludes a negative examination.
17. A January 8, 2009 DHS-49 finds examination areas normal as to general, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neurological, mental. Out of an eight-hour workday claimant can sit about six hours; claimant can stand or walk less than two hours. Claimant has no mental limitations. Exhibit A-32.
18. A February 4, 2008 DHS-49 finds normal examination areas as to general, HEENT, respiratory, abdominal, musculoskeletal, neural, mental. Claimant's condition is stable and claimant can stand or walk about eight hours in an eight-hour workday; sit about six hours in an eight-hour workday. Exhibit A-56.

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 addition 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 working as of the hearing and as the date of application. Claimant testified that she was working at [REDACTED]. Claimant is working 20 hours per week. Claimant testified she could not work more due to her knee. Contrary medical evidence indicates that claimant could stand for approximately six hours out of an eight-hour workday. However, ruling the ambiguities in claimant's favor, this Administrative Law Judge will continue with the analysis. 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).

At one point, SHRT denied claimant on the basis of this step but indicated it would continue the analysis as it did not have a detailed work history. Once again, this Administrative Law Judge will find that since claimant complains that she could not return to her past relevant work due to a knee problem, the analysis will continue. It is noted however, A-56 would indicate that claimant is quite capable of working medium work. However, based on claimant's complaints, claimant would only be capable of sedentary work.

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 finds that based on claimant's complaints as to her knee and standing issues, the Table 1 of the Medical Vocational Grid Rule will be applied. The law classifies claimant at 38 years old as a very young individual. Pursuant to Medical Vocational Grid Rule 201.24, a finding of not disabled is required.

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.

It is further noted that claimant stipulated at the administrative hearing that if she could find a desk job, she could do a desk job full time. For these reasons, and for the reasons stated above, statutory disability is not shown 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 G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 13, 2011

Date Mailed: June 13, 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.

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JGS/db

cc:

