

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: 200929414
Issue No: 2009
Case No: [REDACTED]
Hearing Date: August 26, 2009
Ottawa 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 August 26, 2009. Claimant was represented at the administrative hearing by [REDACTED]

ISSUE

Did claimant establish with credible and substantial evidence MA disability for a closed ended period from June 2008 to November 2008?

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 July 1, 2008, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 1 month of retro MA.
3. On March 12, 2009, the MRT denied.
4. On March 19, 2009, the DHS issued notice.
5. On June 17, 2009, claimant filed a hearing request.
6. Claimant has an SSI application pending with the Social Security Administration (SSA).
7. On July 30, 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 September 3, 2009, SHRT once again denied claimant.

8. As of the date of application, claimant was a 41-year-old female standing 5'8" tall and weighing 275 pounds. Claimant is morbidly obese under the BMI index classifying claimant at 41.8. Claimant has a 12th grade education.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant does not have a driver's license. Claimant testified that she let her driver's license expire due to numbness in her feet.
11. Claimant is not currently working. Claimant last worked in 2005 as a secretary. Claimant has also worked in customer service, temporary work, cashier. Claimant's work history is semi-skilled.
12. Claimant alleges disability on the basis of depression, chronic pain syndrome, degenerative disc disease, lipidemia, peptic ulcer disease. Claimant also has significant and severe issues with hypertension, morbid obesity, and cataracts.
13. Claimant submitted a 49A from her treating physician which diagnoses claimant with low back pain, chronic pain syndrome, osteoarthritis, major depressive disorder, fibromyalgia. Claimant's treating physician has been treating claimant "for years." Claimant has abnormal assessments with regards to her general appearance, abdominal, musculoskeletal, neurological, and mental. Claimant cannot stand and/or walk less than two hours out of an eight-hour workday; claimant cannot sit up to six hours in an eight-hour workday. Claimant has a weight restriction of less than ten pounds which she can only lift occasionally. Claimant cannot engage in activities of daily living and needs assistance with home chores, assistance with her activities of daily living including grocery shopping.
14. Claimant had a April 8, 2009 psychiatric/psychological assessment diagnoses claimant with dysthymia, panic disorder without agoraphobia, psychological factors affecting physical condition.
15. Claimant also alleged at the administrative hearing osteoarthritis.
16. Claimant testified that her chronic pain results in numerous episodes of walking up throughout the night. Claimant has significant psychological problems as evidenced in the psychological report.
17. Claimant subsequently became eligible for MA based upon a dependent child in her household.

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 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). After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that claimant meets or equals 12.04 based on the medical evidence.

In reaching this conclusion, this Administrative Law Judge finds that the psychological impairments and symptoms claimant suffers from as identified in the exam of April, 2009, support finding that claimant equals statutory disability under Listing 12.04 for the closed ended period of time herein.

It is noted that claimant's regular treating physician significantly limits claimant from engaging in any kind of work. Claimant could not do a full range of sedentary work. Moreover, claimant needs assistance with her activities of daily living. Claimant's treating physician is entitled to significant weight.

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 incorrect.

Accordingly, the department's determination in this matter is REVERSED.

The department is ORDERED to make a determination if claimant meets the non-medical criteria for the Medical Assistance program, including any retro months. If so, the department is ORDERED to open an MA case from the date of application and issue supplemental benefits to claimant. The department is ORDERED to review this case in accordance with its usual policy and procedure.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 17, 2011

Date Mailed: February 17, 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:

