

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: 2009-36787
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 3, 2009
Kalamazoo 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 conference hearing was held on November 3, 2009.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) 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 4/17/09, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 5/21/09, the MRT denied.
- (4) On 5/27/09, the DHS issued notice.

- (5) On 8/11/09, claimant filed a hearing request.
- (6) As of the administrative hearing, claimant testified that he has an SSI application pending with the Social Security Administration (SSA).
- (7) On 10/6/09, the State Hearing Review Team (SHRT) denied claimant.
- (8) As of the date of application, claimant was a 34-year-old male standing 6' 1" tall and weighing 220 pounds. Claimant's BMI Index is 29. The BMI Index classifies claimant as overweight. Claimant has a high school education.
- (9) Claimant does not have an alcohol/drug abuse problem or history. Claimant testified he was approved for medical marijuana on July 17, 2009. Claimant smokes approximately one half a pack of cigarettes per day. Claimant has a nicotine addiction.
- (10) Claimant has a driver's license and can drive a motor vehicle.
- (11) Claimant is not currently working. Claimant last worked in November, 2008, as a dish washer. Claimant's work history is unskilled.
- (12) Claimant alleges disability on the basis of severe back spasms and two herniated discs.
- (13) Claimant was incarcerated for possession of cocaine in 1994. During this time, he did janitorial work for approximately two hours a day, five days per week.
- (14) The 10/6/09 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

1/09, claimant was logical and organized. Responded to questions appropriately. Indicated he hears voices, but it happened more in the past. Said depressed and presented as depressed and somewhat anxious. Affect was mostly flat. Exhibit 66. Diagnosis includes major depressive disorder and anxiety disorder. Exhibit 68.

1/09, ambulated without assistive device. No muscle spasm but had point tenderness at L1-2 level. Sensory was intact to touch. Straight

leg raise was negative bilaterally in the seated position for sciatica. Exhibit 74.

In 4/09, claimant's mood and affect normal. Normal motor and sensory findings. Reflexes normal. Exhibit 84.

(15) Claimant's MRI of the lumbar spine, which claimant referred to as documenting two herniated discs, concludes: "Loss of T2 signal and disc herniation at L4-5 and L5-S1, without appreciable central canal narrowing. Mild bilateral neuroforaminal stenosis is present at the L5-S1 level. Exhibit 21. A subsequent interpretation by an independent evaluator [REDACTED] on January 14, 2009 states that claimant 'woke up today and his 'back went out' with pain. He rates that pain as 10/10 today. This occurs about once a month. MRI of the L/S spine showed DJD when it was done in 2003. He has not had another L/S MRI.' Exhibit 73.

(16) A non-contrast CT of the head on 8/11/07 concluded normal head CT. Exhibit 39.

(17) Claimant's complaints at the administrative hearing and descriptions of symptoms are not corroborated by the objective medical evidence.

(18) At the administrative hearing, claimant testified that he has no problems with his activities of daily living including shopping, fixing meals, dishes, laundry, bathroom and grooming needs. Claimant testified that sometimes he has difficulty with bending over.

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).

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 Administrative Law Judge has weighed all of the medical evidence and does not find, taken as a whole, that the evidence points to a severe impairment or combination thereof. However, due to the language in the 2000 MRI of the spine, this Administrative Law Judge will put heavy weight on the fact that Step 2 of the process is a *de minimus* standard. Thus, ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) will find that claimant meet the severity standard at Step 2 and continue the analysis.

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, for similar reasons as discussed in Step 2, this Administrative Law Judge will rule the ambiguities in claimant's favor and continue the analysis.

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 claimant is not disabled pursuant to the Medical Vocational Grid Rule 203.20 as a guide for the reasons set forth below.

First, claimant's seizures are simply not documented as being statutorily disabling. Claimant evidently had one seizure in his adult life--in 2007. This has not been repeated since. See Exhibit 73.

In conjunction with the issues surrounding a potential seizure state, the CT of claimant's head concluded: "Normal head CT." Exhibit 39.

Regarding claimant's statements regarding a herniated disc, while the MRI makes a reference to "some disc herniation" at the L4-5, the MRI goes on to state: "No appreciable neuroforaminal narrowing is seen. Impression: Loss of T2 signal and disc herniation at L4-L5 and L5-S1, without appreciable central canal narrowing. ..." Exhibit 21. A subsequent review of this MRI on January 14, 2009 by [REDACTED] states: "MRI of the L/S spine showed DJD when it was done in 2003. He has not had another L/S MRI." Exhibit 73. Statutory disability does not recognize normal aging as statutorily disabling. Thus, this MRI does not meet the standards required at 20 CFR 416.928. It is also noted that claimant's testimony at the administrative hearing regarding his activities of daily living, in the main, indicated that he is quite independent and does not need any major assistance. This testimony is inconsistent with claimant's reported complaints regarding the intensity of his symptoms. This inconsistency fails to meet the

corroboration requirements found at 20 CFR 416.927(a)(1). It also fails to meet the pain requirements found at 20 CFR 416.929.

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, compliance 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.

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: November 9, 2009

Date Mailed: November 10, 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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