

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: 2009-3682
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Kent 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 three-way telephone hearing was held with claimant's attorney appearing from his office-- [REDACTED]

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 7/25/08, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 9/26/08, the MRT denied.

(4) On 9/30/08, the DHS issued notice.

(5) On 10/17/08, claimant filed a hearing request.

(6) Pursuant to a communication received from claimant's attorney on December 29, 2009, claimant has an SSI application pending with the Social Security Administration (SSA).

(7) On 11/17/08, the State Hearing Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 49-year-old male standing 5' 8" tall and weighing 175 pounds. Claimant's BMI Index is 26.6, classifying claimant under the BMI Index as overweight. Claimant has a high school diploma.

(9) Claimant has a history of alcoholism. Claimant testified at the administrative hearing that he had his last alcoholic drink in May, 2008. Medical records indicate that in May of 2008 that claimant was consuming a fifth of whiskey per day. Claimant testified that he does not have any drug abuse problems or history. Contrary medical evidence indicates cocaine dependency, chronic and continuous per Exhibit 647. Claimant smokes approximately one pack of cigarettes per day. Claimant has a nicotine addiction.

(10) Claimant has a driver's license and can drive an automobile.

(11) Claimant is not currently working. Claimant last worked in 2005 pursuant to Exhibit 732. Claimant testified at the administrative hearing that he has been discharged from all of his positions due to alcoholism. Claimant lists his work history as unskilled work.

(12) Claimant alleges disability on the basis of hearing loss, arthritis, depression, alcoholism.

(13) The 11/17/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Medical Summary: Medical exam report from treating physician indicates claimant had diagnosis of mild osteoarthritis, alcoholism, hyperlipidemia, low back pain, tobacco abuse. Findings were considered within normal limits. Physician opined that conditions would not pose any limitations. Exhibit 736.

██████████ records include records from treatment from 2005 to 2008. Include today admission and 5/08 for acute alcohol, chronic pain, depression. Also included was an admission for eight days in 2/29/08 for acute alcohol intoxication and depressive disorder. Other records include group therapy for alcohol dependence and somewhat routine physical-related exams. Exhibits 717, 645, 468, 479.

ANALYSIS: Claimant's physical and mental condition would not limit his ability to work according to the treating physician. VA records indicate that claimant has a problem with alcohol abuse and it appears he does better when abstinent. Medical opinion considered in light of CFR 416.927. Evidence in file does not demonstrate any other impairments that would pose a significant limitation. PL 104-121 cited due to materiality of drug and alcohol abuse. Denied per 20 CFR 416.921(a) due to non-severe impairment(s). Exhibits 739, 740.

- (14) Other medical evidence includes:
- (a) A DHS-49 completed 8/29/08, indicating claimant has normal evaluations with regards to his general exam, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neurological, and mental. The history included verbal complaints on behalf of claimant as to pain. The diagnosis states: 'mild osteoarthritis, alcoholism, hyperlipidemia, LBP, tobacco use. Claimant has no physical limitations and no mental limitations.' Claimant can meet his needs in the home. Exhibits 735, 736.
 - (b) Numerous reports in claimant's medical file include numerous lab reports showing claimant has repeatedly had high AST and ALT findings. Claimant also has high cholesterol findings.
 - (c) Claimant's copious medical file includes many radiology reports showing normal findings or non-severe findings. See for example, Exhibits 669, 668, 667, 665.

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). After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge concurs with SHRT in findings that claimant's copious medical evidence does not rise to statutory disability on the basis of 20 CFR 416.921(a) with

regards to all of claimant's alleged impairments except for the alcoholism. In reaching this conclusion, it is noted that claimant has had numerous radiology evaluations and reports which do not indicate any severe physical impairment or abnormality. Claimant has some general complaints of arthritis, however, there are no medical reports that indicate that his arthritis interferes with his ability to engage in work or work-like settings. Arthritis is typically part of normal aging. Normal aging is not recognized as statutorily disabling.

With regards to claimant's complaints as to pain, these do not meet the statutory requirements pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Moreover, the complaints of pain do not meet the statutory and regulatory requirements found at 20 CFR 416.927.

The analysis will thus continue with regards to claimant's alcoholism and depression. First and foremost, it is noted that the depression is considered to be secondary to the alcoholism.

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). This fourth step examines the alleged non-physical impairment(s). As noted above, claimant's depression is considered secondary to the alcoholism. See Exhibits 739 and 740. Thus, this Administrative Law Judge finds that claimant is not disabled under federal regulations pursuant to 20 CFR 416.920(f) and will continue the analysis with regards to the alcoholism.

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 cannot work due to his alcoholism at the fifth step of the analysis.

However, having determined that alcoholism is the disability, federal law requires an analysis as to whether it is material: 20 CFR 416.214, 416.935-416.941.

As this Administrative Law Judge finds that alcoholism is the only impairment which prohibits claimant from working, the alcoholism is material. As alcoholism is material to claimant's disability, claimant is not eligible for statutory disability under the law 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 Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 22, 2010

Date Mailed: January 25, 2010

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

cc:

