

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: 2009-477
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 28, 2009
Montcalm 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, a telephone hearing was held on January 28, 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 6/3/08, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 8/14/08, the MRT denied.
- (4) On 8/19/08, the DHS issued notice.

(5) On 9/22/08, claimant filed a hearing request.

(6) Claimant testified under oath that she has an SSI application pending with the Social Security Administration (SSA). Claimant was denied on 10/8/08 and had evidence at the administrative hearing of having filed a timely appeal. SSA denied claimant on the basis of a non-severe impairment.

(7) On 10/9/08, the State Hearings Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 50-year-old female standing 5' 5" tall and weighing 192 pounds. Claimant's BMI is 31.9. Claimant has a Bachelor's of Fine Arts.

(9) Claimant testified that she smokes approximately ½ pack of cigarettes per day. Claimant has a nicotine addiction.

(10) Claimant testified that she does not have an alcohol/drug abuse problem or history.

(11) Claimant has a driver's license and can drive a motor vehicle.

(12) Claimant is not currently working. Claimant last worked on October 15, 2007 as a cashier. Claimant's work history includes a number of different types of positions--from field worker, machine inspector, assembler, and cashier. Claimant's work history is unskilled.

(13) Based on claimant's application, claimant is alleging disability due to carpal tunnel, back pain, and joint inflammation. Claimant also indicates she has poor eyesight.

(14) The SHRT decision of 10/9/08 denied claimant on the basis of Step 4--claimant is capable of performing past relevant work.

(15) Claimant submitted a 7/2/08 DHS-49 completed by her regular treating physicians. Claimant has been seen by these physicians for approximately 4 to 5 years. The history of impairments includes left shoulder problems, hips hurting, hand numbness, and a statement which is not legible. The current diagnosis is listed as: "Diffuse bursitis, carpal tunnel

syndrome.” The physician finds abnormal examination areas as to general: fatigue, anxiety, diffuse pain. Also abnormal is HEENT: glasses. The physician also notes abnormal findings as to musculoskeletal with regards to the hips, shoulders, weakness. Mental is also identified as abnormal, indicating claimant is anxious and tearful. The physician notes that claimant should be able to use both hands/arms and feet/legs for grasping, reaching, pushing/pulling, fine manipulation, and operating foot/leg controls. Claimant can stand and/or walk about 6 hours out of an 8-hour work day; sit about 6 hours out of an 8-hour work day. Exhibits 11 and 12.

(16) Claimant testified at the administrative hearing that she can drive a vehicle, can prepare meals, do household chores and laundry, and does not need any assistance with bathroom or grooming needs.

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

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.

These federal guidelines state in 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.

...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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed

impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

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). 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. It is the last step for alleged mental impairments. 20 CFR 416.920(e).

In this case, this Administrative Law Judge agrees with the SHRT conclusion wherein SHRT finds that claimant can return to past relevant work on the basis of the medical evidence. In support of that is primarily the major piece of medical evidence in this file--the DHS-49. Despite the many and numerous listed impairments, the physician essentially notes that claimant is capable of working in that claimant can stand, walk, and sit about 6 hours out of an 8-hour work day. Despite claimant's carpal tunnel, she has no restrictions with regards to grasping, reaching, pushing/pulling, and fine manipulation. The physician does note some mental limitations with regards to sustained concentration and social interaction. However, the physician

does not note that it interferes with her ability to engage in work. Claimant can meet her needs in the home based upon the information provided by the physician. It is noted that claimant stipulated at the administrative hearing that she has been going to this group of practitioners as a family doctor for approximately 4 to 5 years.

For these reasons, and for the reasons stated above, statutory disability is not shown pursuant to the requirements found at 20 CFR 416.913(b), .913(d), and .913(e).

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 decision in this matter is hereby UPHELD.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 5, 2009

Date Mailed: February 6, 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.

JGS

cc:

