



STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No: 2009-6741
Issue No: 2009; 4031
Case No: 
Load No: 
Hearing Date:
March 24, 2009
Wayne 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 March 24, 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 8/12/08, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 10/6/08, the MRT denied.
- (4) On 10/16/08, the DHS issued notice.

(5) On 10/27/08, 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 in December, 2008, and testified under oath that she timely appealed.

(7) On 12/30/08, the State Hearings Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 57-year-old female standing 5' 3" tall and weighing 188 pounds. Claimant's BMI is 33.3, placing claimant in the obesity range. Claimant has a high school diploma.

(9) Claimant does not smoke.

(10) Claimant 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 in November, 2007, at [REDACTED] Claimant's work history is unskilled. Claimant lists her work history as a plant technician, office cleaner, and self employed "doing odd jobs."

(13) Claimant alleges disability on the basis of chronic obstructive pulmonary disease, depression, heart palpitations, and migraine headaches.

(14) Claimant identifies her primary care physician as [REDACTED] Claimant's hearing request indicates that this physician: "... is a very good and thorough doctor. Listened and addressed all my symptoms...."

(15) A 9/5/2008 evaluation by [REDACTED] claimant's primary treating physician, finds no symptoms with regards to the following examination: systemic, head, neck, eye, otolaryngeal, breast, cardiovascular, pulmonary, gastrointestinal, genitourinary, endocrine, hematological, neurological, psychological, and skin. [REDACTED] indicates with regards to musculoskeletal: "No muscular skeletal symptoms, no finger pain, swelling or stiffness, no hand

pain, swelling or stiffness, no wrist, elbow, arm, shoulder, back, hip, thigh, knee, leg, ankle, foot, toe, muscle pain, stiffness, or swelling. No soft tissue swelling, no muscle cramps, no localized joint swelling, no localized joint stiffness.” Claimant had normal exams with regards to general appearance, head, neck, eyes, ears, nose and throat, nose, oral cavity, pharynx, lymph nodes, chest, breasts, lungs, cardiovascular, back, abdomen, urinary system, genitalia, pelvic, rectal, musculoskeletal, and numerous other body areas. [REDACTED] psychiatric exam states: “Mood was euthymic.” The physician concludes with an assessment that claimant is obese and needs to be on a 1,400 calorie diet and engage in safe, non-strenuous aerobic exercise. Claimant has osteoarthritis modalities. Claimant was given an arthritis pamphlet.

(16) [REDACTED] completed an FIA-49 on 9/5/08, indicating that claimant can work-- claimant can stand and/or walk at least 2 hours in an 8-hour workday and sit about 6 hours in an 8-hour workday. Claimant can lift up to 24 pounds. Claimant can use her hands/arms for grasping, reaching, pulling, pushing, and fine manipulation. Claimant can also use her feet/legs for operating foot/leg controls.

(17) Claimant’s labs show high cholesterol, including LDL.

(18) Claimant’s hearing request states that claimant feels that she is “totally disabled.”

(19) Claimant complained at the administrative hearing that she cannot hold or grasp anything. Claimant’s job at [REDACTED] included putting watch batteries in watches.

(20) Claimant can do basic household chores around the house and does not need any assistance with her bathroom and 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 Administrative Law Judge might normally stop with this type of evidence at Step 2 of the analysis. However, 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).

There is no evidence in this case that claimant is being treated for a mental impairment. In fact, on her most recent evaluation, her treating physician indicates that her mood is euthymic. The 49 completed on 9/5/08 states that there are no mental limitations. Claimant does not have a severe mental impairment. The analysis continues with regards to claimant's physical impairments.

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence as to her physical/medical impairments. The analysis continues.

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 does not meet statutory disability on the basis of Medical Vocational Grid Rule 203.14 as a guide.

It is noted that the only evidence that does not support a medium work analysis is the weight restriction of 24 pounds that claimant can occasionally lift found on the 49. However, the bulk of the medical evidence on the 49, as well as the very thorough and extensive evaluations of claimant's primary treating physician found throughout the medical evidence, supports finding claimant capable of medium work, for the reasons set forth below.

With regards to claimant's COPD, there is no evidence in the file which would indicate that claimant has COPD or a problem with pulmonary systems which rises to statutory disability as it is defined under the law and as required by federal regulations at 20 CFR 416.913. It is noted that claimant's treating physician has in two separate evaluations-- [REDACTED] and the

other [REDACTED], has found no cardiovascular symptoms or pulmonary symptoms which are severe.

As already noted, claimant does not show a severe disabling impairment with regards to her depression.

With regards to claimant's heart palpitations, and migraine headaches, neither of these are supported by sufficient medical evidence as required under 20 CFR 416 and/or that rises to statutory disability.

With regards to claimant's obesity, as already noted, obesity will not entitle an individual to statutory disability. Congress removed obesity from the Listings of Impairments and this alone will not show disability.

With regards to claimant's diagnosis of osteoarthritis, generally this is considered to be normal aging. Claimant is 57 years old at application. Claimant also has some minimal arthritis. However, it is noted that claimant's complaint that she can't hold or grasp anything is not consistent with her primary physician's evaluation. [REDACTED] states he does not find any musculoskeletal problems with regards to symptoms of pain, swelling, stiffness with regards to claimant's entire system--finger, hand, wrist, elbow, arm, shoulder, back, hip, thigh, etc. Per Exhibit 7 and 8, claimant has no repetitive action restrictions. Normal aging is not recognized as statutorily disabling under the law or state policy.

More importantly, claimant's treating physician basically concludes on the 49, based upon the evaluation that claimant is capable of working--claimant can stand and/or walk at least 2 hours out of an 8-hour workday and sit for at least 6 hours out of an 8-hour workday.

This Administrative Law Judge finds the great weight of the medical evidence is not consistent with claimant's complaints. 20 CFR 416.928. Statutory disability is not shown.

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 Ismael Ahmed, Director
Department of Human Services

Date Signed: April 24, 2009

Date Mailed: April 27, 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/cv

cc:

[REDACTED]