

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: 2010-9265
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 2010
Hillsdale 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 hearing was held on February 4, 2010.

ISSUE

Did the Department of Human Services (DHS) properly propose to close claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) cases at review?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant was previously approved MA and SDA by MRT on 8/29/07, pursuant to a 7/07 application date, based on Listing 12.04. MRT scheduled the review for 8/08. Exhibit 54.

(2) In 8/08, MRT approved continuing eligibility requesting a review date for 9/09. Exhibit 22. On 8/09, the department reviewed claimant's cases.

(3) On 9/14/09, MRT denied continuing eligibility. Exhibit 1.

(4) On 10/7/09, the DHS issued notice.

(5) On 10/14/09, claimant filed a hearing request.

(6) On March 29, 2007, claimant applied for Social Security disability under both Title II and Title XVI. Claimant alleged an onset date of January 1, 2006. On October 6, 2009, Judge [REDACTED] issued an unfavorable decision. That decision is adopted and incorporated by reference herein.

(7) Claimant testified at the administrative hearing that she has made an appeal to the Appeals Council with regards to the denial of her social security claim.

(8) On 12/21/09, the State Hearing Review Team (SHRT) denied claimant. Exhibits 80, 81.

(9) As of the date of review, claimant was a 46-year-old female standing 5' 6" tall and weighing 230 pounds. Claimant is classified as obese. Claimant testified that this is a normal weight for her. Claimant has a GED.

(10) Claimant does not have an alcohol/drug abuse problem or history. Claimant testified that she smokes approximately ½ pack of cigarettes per day, although until recently she indicated that most of her life she smoked 1 to 1 ½ packs of cigarettes per day. Claimant has a nicotine addiction.

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

(12) Claimant is not currently working. Claimant testified that she last worked three years ago for approximately 6 months. Claimant's work history is unskilled.

(13) Claimant alleges continuing disability on the basis of depression. Claimant also stated at the administrative hearing that she has high cholesterol, allergies, and high blood pressure.

(14) Claimant requested disability at the administrative hearing on the basis that she could not afford her medications, does not have a job, and does not have income.

(15) The 12/21/09 SHRT decision is adopted and incorporated by reference to the following extent:

In 6/08, claimant's mood was somewhat labile. Exhibit 36. 5/09 mental status basically unremarkable. Exhibit 20. Noted to be stable and doing well on current medical regimen. Exhibit 21.

In 8/09 had diagnosis of major depression, hyperlipidemia, gastroesophageal reflux index, bi-polar, diverticulitis, constipation, lower extremity edema and obesity. She was 64 $\frac{3}{4}$ " and 241 pounds. Exhibit 10. She had bilateral lower extremity edema but her physical examination was otherwise normal. No physical limitations. Exhibit 11.

Recommendation: Medical improvement shown. Denied per Medical Vocational Grid Rule 203.28 as a guide. Exhibits 80, 81.

(16) A DHS-49E completed 5/19/09 indicates that claimant is markedly limited in 1 category out of 20; claimant is moderately limited in 10 categories; there are no limitations in 9 categories. Exhibits 14,15.

(17) A DHS-49E completed 7/30/08 indicates claimant is markedly limited in 2 categories; moderately limited in 9 categories; no evidence or not significantly limited in 9 categories. Exhibits 32,33.

(18) A [REDACTED] 5/19/09 case note states claimant is stable and doing well on current regimen and "is generally not depressed..." Exhibit 21.

(19) An echocardiogram report dated 8/13/07, indicates technically difficult study due to obesity; no significant valvular abnormalities noted. Exhibit 63.

(20) A radiology report dated July, 2007 of the chest concluded a negative study.

(21) A radiology report dated 8/13/07 of the cervical spine concludes mild degenerative osteoarthritis at C5-6 could be considered from the study but otherwise the study is unremarkable. Exhibit 61.

(22) Claimant did not indicate any severe or restrictive restrictions with regards to her activities of daily living including her bathroom and grooming needs. Claimant is able to take care of daily activities including laundry, meal preparation, shopping, etc. Claimant testified that she had evidence that she could not work based upon exhibits 14-21. Exhibits 14-21 in fact indicate that claimant's condition has improved, and that "...claimant is not depressed...generally doing well; her prognosis is good..." See exhibit 21.

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.

The law is very specific with regards to assessment of cases at review. In this regard, the federal regulations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s)... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

The review analysis basically requires an initial two-step assessment as to whether an individual has improved and whether or not that improvement is related to their ability to engage in work and work-like settings.

With regards to the first prong, this Administrative Law Judge finds that the information in the mental residual functional capacity assessment done on 7/22/09 shows that claimant has improved. As noted in the Findings of Fact, MRT approved claimant initially on the basis of Listing 12.04. The documents used in reliance of support of the Listing indicate that claimant had significant and severe limitations based upon prior forms and narratives with regard to her mental

state. However, the mental residual functional capacity assessment form from 2009 shows a decrease in severity. In addition, the psychiatrist's assessment by [REDACTED] completed on 7/22/09 states in part that claimant

... is generally not depressed, not having symptoms of mania, and only becomes anxious in social settings that are crowded... generally doing well; Her prognosis is good... Exhibit 21

Thus, on this basis, this Administrative Law Judge finds that claimant has improved.

With regards to whether the improvement is related to claimant's ability to engage in work and work-like settings, there is no indication in claimant's evidence that she has a severe residual mental impairment which interferes with her ability to engage in work or work-like settings. Specifically, in asking claimant regarding such evidence which would indicate an inability to work, claimant pointed to the documents that actually show significant improvement. Claimant also made note of not having the money to purchase medicines and not having income. However, this criteria is not relevant as to showing total disability as required under federal and state law. This Administrative Law Judge finds that the improvement is related to claimant's ability to engage in work and work-like settings pursuant to the requirements found under the above review standards and thus, the analysis will continue.

Having applied the two step prong at review, the remaining five steps of the sequential analysis is applied. With regards to the sequential analysis, 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 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).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. 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 concurs with SHRT in finding claimant not disabled pursuant to Medical Vocational Grid Rule 203.28 as a guide. Claimant's medical evidence, taken as a whole, indicates that claimant is not suffering from severe depression at this time, is in no acute distress, had good hygiene and grooming, is calm, pleasant, and cooperative, has good eye contact, and is "generally not depressed...prognosis is good...patient is doing well" See Exhibit 21.

With regard to claimant's other alleged problems such as the high cholesterol, allergies, and high blood pressure, there is no indication that these meet statutory disability as they are not limiting and there is no evidence that they interfere with claimant's ability to engage in work or work-like settings. Claimant's radiology report of the cervical spine concluded an unremarkable study. There was some minimal degenerative osteoarthritis; however, absent a showing that a symptom is symptomatic and/or disabling, general aging is not considered to meet the definition of statutory disability. Claimant's echocardiogram did not find any significant valvular abnormalities. Claimant had a negative study of her chest.

Regarding claimant's obesity, Congress removed obesity from the Listing of Impairments shortly after the removal of drug addiction and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. It is also noted that claimant's smoking and/or obesity, while they may compound claimant's symptoms, do not reach statutory disability as reflected in *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988). Thus,

obesity in-and-of itself is not sufficient to show statutory disability. Moreover, in the instant case, claimant testified that her obesity is normal and does not appear to interfere with claimant's activities of daily living. Claimant keeps a clean house, visits her daughter, and babysits her grandchildren. See Judge [REDACTED] decision.

As to claimant's request for continuing disability on the basis of income issues, this is simply not a criteria which would meet the definition of federal or statutory disability. Claimant's activities of daily living are largely independent. Claimant's age is considered a "younger individual" under the federal and state law.

For these reasons, and for the reasons stated above, statutory disability is not shown for both continuing and under the remaining five-step analysis at review.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's denial of claimant at review was correct.

Accordingly, the department's proposed closure in this matter is hereby UPHeld. The department may close claimant's cases.

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

Date Signed: March 18, 2010

Date Mailed: March 22, 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:

