

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: 2010-24250
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2010
St. Clair 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 April 1, 2010.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P)?

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 1/16/10 claimant applied for MA-P with the Michigan DHS. Claimant testified that she did not apply for SDA but does not have income.
- (2) Claimant did not apply for retro MA.

- (3) On 1/25/10 the MRT denied.
- (4) On 1/29/10 the DHS issued notice.
- (5) On 2/9/10 claimant filed a hearing request.
- (6) Claimant has been denied SSI by SSA. Claimant testified that she has had a new impairment since her last SSA denial. Jurisdiction is proper as the exceptions apply.
- (7) On 3/15/10 the State Hearing Review Team (SHRT) denied claimant.
- (8) As of the date of application, claimant was a 47-year-old female standing 5'6" tall and weighing 154 pounds. Claimant has a 9th grade education.
- (9) Claimant does not have an alcohol/drug abuse problem or history. Claimant does smoke. Claimant has a nicotine addiction.
- (10) Claimant is not currently working. Claimant does not list any significant work history. Claimant indicates that she worked as a nurses aid/home care aid but did not indicate any amount of time on her medical evidentiary packet. Claimant testified at the administrative hearing that she worked for approximately 1 year as a nurse/home care aid. Claimant stated that her children support her.
- (11) Claimant alleges disability on the basis of fibromyalgia.
- (12) The 3/15/10 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...Medical Summary: In 11/09 claimant reported increased pain because she had run out of her medications. Neurological exam was grossly intact. No synovitis in the hands or wrists and no bruising in the fingers. She did have multiple tender points. There was no effusion noted in the knees. Exhibit 7. Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. Denied per 203.25 as a guide.
- (13) Other medical evidence includes:

- (a) A DHS 49 completed in January, 2010, states that claimant has a complaint of chronic pain and a diagnosis fibromyalgia. Claimant can sit and/or walk at least 2 hours out of an 8 hour work day; claimant can sit about 6 hours in an 8 hour work day. Claimant does not need any devices for ambulation. Claimant has no restrictions regarding fine manipulation and/or operating feet/leg controls. Claimant has no mental limitations. Claimant meets her needs in the home. Exhibit 8 and 9.
- (b) An Orthopedic Associates of Port Huron evaluation by Dr. VanDellen, DO, completed 11/11/09 with a chief complaint fibromyalgia lists the following impression: Fibromyalgia, bilateral hand pain, brain aneurysm, COPD, back pain, constipation. Claimant was encouraged to maintain stretching and/or low impact exercise program. Exhibits 6 and 7.

(14) Claimant testified at the administrative hearing that she does not need any assistance with preparing meals, shopping, dishes, dusting, vacuum, laundry, and her bathroom and grooming needs.

(15) Claimant stipulated that she did not have any evidence that she could not work.

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).

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 second step is a *de minimus* standard. After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge does not find that claimant's medical evidence meets severity as it is defined under the law at step two of the analysis. The medical evidence indicates that claimant can work. The DHS-49 supports finding that claimant can engage in a number of jobs including those that would be found at the vocational third grid with regards to standing, walking and sitting. However, the physician does not that claimant can lift up to 10 pounds. This would restrict claimant to sedentary work. Again, however, this would not meet severity at step two as claimant is capable of sedentary work. However, this may indicate some issue with regard to severity as to weight restriction and the ALJ will continue the analysis in the alternative.

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 finds claimant does not meet statutory disability on the basis of Medical Vocational Grid Rule 201.18. In reaching this conclusion, it is noted again that the DHS-49 plays a significant role in that it essentially indicates that claimant can work. Moreover, the evaluation completed 11/11/09 does not contain any medical evidence which it would indicate that claimant is not capable of working. In general, most of the impressions listed by the physician would not indicate that they are limiting with regards to work. Constipation may be a problem for claimant but there is insufficient information that this impression along with the others would restrict claimant from engaging in any work or work like setting.

It is also noted that claimant testified at the administrative hearing that she is basically independent with her activities of daily living. Moreover, claimant stipulated at the administrative hearing that she did not have any medical evidence that she could not work. Statutory disability is not shown.

Under 20 CFR 416.912, claimant has the burden of proof. Moreover, claimant's complaints of chronic pain are simply not corroborated on the medical record as required by 20 CFR 416.929 and .945.

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: April 28, 2010

Date Mailed: April 30, 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/lk

cc:

