

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201025199
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 13, 2010
Ingham 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, an in-person hearing was held on April 13, 2010. Claimant was represented at the administrative hearing by [REDACTED], collecting on behalf of a hospital.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) 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 July 29, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On October 1, 2009, and subsequently again on March 5, 2010, the MRT denied.
4. On October 1, 2009, the DHS issued notice.
5. On December 29, 2009, claimant filed a hearing request.
6. Claimant testified that she has received an SSI denial by SSA but is alleging new problems. The exceptions apply.
7. On March 23, 2010, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant's request to hold the record open for the

submission of new and additional medical documentation on February 15, 2011 SHRT once again denied claimant.

8. As of the date of application, claimant was a 43-year-old female standing 5'5" tall and weighing 280 pounds. Claimant's BMI Index under the Body Mass Medical Chart is 46.6 classifying claimant as morbidly obese. Claimant has some college including an advanced business certificate.
9. Claimant testified at the administrative hearing that she no longer does alcohol/drugs. Contrary medical evidence indicates significant and positive alcoholism, drug abuse. Claimant has a significant smoking history that is quite heavy. Claimant testifies as of the date of the administrative hearing she had cut down.
10. Claimant testified that she does not have a driver's license due to it being revoked for unpaid tickets.
11. Claimant is not currently working. Claimant last worked approximately two years previously. Claimant's work history is working in fast food restaurants, and Acorn.
12. Claimant alleges disability on the basis of secondary to knee pain, blood clot, osteoarthritis, back pain, kidney stones, liver, asthma, shortness of breath, obesity, depression, bronchitis, morbid obesity, airway disease, gastritis.
13. The February 23, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...Evidence of some degenerative arthritis of bilateral knees with some occasional effusion. Claimant is noted to be obese. No evidence of kidney stones, asthma/shortness of breath or liver dysfunction. Recent exam for SSA noted claimant exhibited exaggerated pain behaviors and refused to give best effort. Positive leg raise test while supine but it was negative when seated...SSA psychiatric eval noted claimant had lengthy history of polysubstance abuse; the evaluator was unable to ascertain the exact extent of alleged remission. Claimant exhibited a high mistrust toward evaluator.

14. The subsequent February 15, 2011 SHRT decision is adopted and incorporated to the following extent:

New information: Claimant admitted 12/08 due to abdominal pain. Admitted 3/10 due to unknown overdose. Drug screen positive for opiates and benzopines. No evidence of suicidal issues...Claimant had a history of substance abuse. She was

withholding, tangential and vague. Reported history of depression and compulsive stealing. Psychologist indicated that if claimant could maintain sobriety, he believed she could understand and follow simple instructions. Denied per materiality of drug and alcohol abuse.

15. The psychological assessment completed April 20, 2009 states in part that claimant has blackouts, withdrawal, alcohol taken in large amounts, persistent desire and unsuccessful efforts to cut down or control alcohol use, alcohol use continued despite knowledge of persistent and recurrent physical and psychological problems being exacerbated by alcohol use. Cocaine abuse, Diagnoses: Alcohol dependence—"I am uncertain about her current state of remission; opiate dependence; cannabis dependence; nicotine dependence; depression."
16. An April 17, 2009 [REDACTED] evaluation concludes motor strength and tone normal, back pain but considered morbidly obese with a BMI of 40.7—a condition which may contributing to her low back pain; bilateral knee complaints—she did not require the use of an assistive device.

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).

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. 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 that claimant could be found to be disabled on the basis that she could not be expected to do a full range of sedentary work with her current state of obesity, drug abuse, nicotine addiction, and other complaints. However, as noted in the Findings of Fact, the psychologist who evaluated claimant indicated that if claimant could maintain sobriety, he believed she could understand and follow simple instructions. Thus, pursuant to the psychological evaluation, the drug and alcohol is material to any finding of disability pursuant to 20 CFR 416.214; 20 CFR 416.935 et al--941. The evidence indicates that DA&A is material and thus, claimant is ineligible for statutory disability.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: September 28, 2011

Date Mailed: September 28, 2011

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/db

cc:

