

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201048090

Issue No: 2009

[REDACTED] [REDACTED]
Hearing Date: October 19, 2010
Clinton 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 October 19, 2010. Claimant was represented by [REDACTED]
[REDACTED]

ISSUE

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

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 September 22, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On June 7, 2010, the MRT denied.
4. On June 11, 2010, the DHS issued notice.
5. On August 4, 2010, claimant filed a hearing request.

6. Claimant testified at the administrative hearing that she has an SSI application pending with the Social Security Administration (SSA). Claimant testified that she did not apply until August 25, 2010 and added more impairments than those alleged herein. Claimant alleged a disability onset date pursuant to an SOLQ from Social Security Administration of February 14, 2009—six months prior to the application herein. Claimant was denied.
7. On August 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 December 13, 2010 SHRT once again denied claimant.
8. As of the date of application, claimant was a 46-year-old female standing 5'8" tall and weighing 220 pounds. Claimant's BMI is 33.5 under the BMI Index. Claimant's classification indicates obesity. Claimant has a 12th grade education along with college—"on and off for the last ten years."
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant testified that she smokes approximately ten cigarettes per day. Medical evidence indicates a smoking history of a pack per day for most of her life. Claimant has a nicotine addiction.
10. Claimant has a driver's license and does drive an automobile.
11. Claimant is not currently working. Claimant last worked in February 2008 as a residential tech. Claimant has also worked at [REDACTED]s as a customer rep, bank teller and research tech for [REDACTED]. Claimant's work history is skilled/semi-skilled.
12. Claimant alleges disability on the basis of obesity, fibromyalgia, cervical spine bulging disc, depression.
13. The August 23, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
14. The subsequent December 13, 2010 SHRT decision is adopted incorporated to the following extent:

Medical summary: discharge paperwork: initial involuntary admission secondary to depression with suicidal ideation by overdose, stable condition. Exhibit A3. Discharge paperwork: diagnosed with transient ischemic attack, all testing normal, symptoms fully resolved. Exhibit A1. Offices noted for symptoms positive for fibromyalgia, multiple x-rays normal. Treating source report that claimant retains ability to perform sedentary exertional tasks.

15. Additional medical evidence from SHRT indicates that a [REDACTED] comprehensive psychological assessment completed November 22, 2010 stating: "I was smoking a pack of cigarettes a day in April 2010." Reports attending [REDACTED] and majoring in social work as a sophomore. The assessment concludes:

From a psychological point of view [claimant] could understand and follow instructions. She could perform simple routine tasks. She would have some difficulty handling work pressure and stress. She could co-workers, customers and supervisors...
16. A November 29, 2010 physical evaluation stating client gave a history indicating she cannot work but did not give a clear symptom as to why. The conclusion of the evaluation states that physically claimant is able to do all the orthopedic maneuvers on DDS Form 41.
17. A discharge evaluation in August 2010 indicates major depression rheumatoid arthritis, hypertension, fibromyalgia, nicotine abuse. Smokes a pack of cigarettes per day for 25 years...Pain in the knees due to condramyalgia patella, mild osteoarthritic changes on x-rays of the knees, contributing to syndromes. Quadricep strengthening and weight loss would be helpful. Numerous x-rays and MRI consistent with degenerative disc disease. Strengthening exercises for lumbar spine would be helpful.
18. A cervical spine x-ray revealed normal alignment.
19. Multiple x-rays contain nonsignificant findings.
20. A March 9, 2009 rehab assessment states in part that claimant's symptoms include headaches, sleep difficulties, coughing, smoke, gastric reflex, nighttime urination, aches, stiffness, leg cramps, leg jerking, decrease in memory, decreased concentration, and depressed mood.

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.

Prior to any substantive review, jurisdiction is paramount. As noted in the Findings of Fact, claimant has had a final determination by SSA for her SSI. Under 42 CFR 435, the state agency does not have jurisdiction. However, due to the ambiguity which could arise with regards to a subsequent application, this Administrative Law Judge will do the sequential analysis in the alternative.

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 can do other work pursuant to Medical Vocational Grid Rule 201.27 as a guide.

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

It is noted that claimant's smoking and/or obesity are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th cir 1988) decision. In *SIAS*, the claimant was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised claimant to reduce his body weight. The court said in part:

...The claimant's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The claimant admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the claimant in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

In *SIAS*, the claimant was found not truly disabled because the secretary disregarded the consequences resulting from the claimant's unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th cir 1984).

It is noted that in general, the specific medical evidence in claimant's file contains much with regards to symptoms without corresponding specific disease issues. Specifically, claimant's x-rays are generally nonsignificant and/or show degenerative disc disease. There is no indication that claimant's problems are unusual with regards to normal age. Statutory disability does not recognize normal aging as statutory disability.

It is also noted that with regards to the psychological assessment, the psychologist in essence concludes that claimant is capable of working: "She could perform simple routine tasks. She could understand and follow instructions."

As to claimant's alleged problems as to her physical impairments, while she may have some complaints, her orthopedic maneuvers were all considered normal pursuant to the information on DDS Form 41.

For these reasons, and for the reasons stated above, 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 2, 2011

Date Mailed: June 2, 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.

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