

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: 2010-1826
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 12, 2009
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 November 12, 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 4/22/09, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant applied for three months of retro MA.
- (3) On 7/16/09, the MRT denied.
- (4) On 7/23/09, the DHS issued notice.
- (5) On 8/27/09, claimant filed a hearing request.

(6) Claimant recently received an unfavorable SSI decision by SSA. Claimant testified at the administrative hearing that he intends to appeal.

(7) On 10/19/09, the State Hearing Review Team (SHRT) denied claimant. Pursuant to claimant's request to hold the record open for the submission of new and additional medical documentation, on 11/16/09 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 54-year-old male standing 5' 11" tall and weighing 240 pounds. Claimant's BMI Index is 33.5, classifying claimant as obese. Claimant has an 8th grade education.

(9) Claimant does not have an alcohol/drug abuse problem or history. Claimant testified he smokes 1 pack of cigarettes per day. Medical evidence indicates 1 ½ packs per day. Claimant testified he has a smoking history of 2 ½ packs per day. Claimant testified that he smoked that amount until approximately at application, where he decreased his cigarette smoking. Claimant has a nicotine addiction.

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

(11) Claimant is not currently working. Claimant's work history is as a machinist. Claimant last worked in 2009. Claimant had worked in production work from 1996 until 2009, when he was laid off. Claimant currently collects unemployment. Claimant testified that he represented to the unemployment agency that he is capable and ready to work. Claimant's work history is unskilled.

(12) Claimant alleges disability on the basis of severe depression, panic and anxiety attacks, emphysema, migraines.

(13) The 10/9/09 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

In 4/09, claimant was 6' 1" and 226 pounds. Blood pressure 140/110. Diagnosis of depression, Chronic Obstructive Pulmonary

Disease (COPD), hypertension, osteoarthritis of the right ankle. Physical exam within normal limits. Exhibit 52.

Psychiatric eval of 8/08 showed claimant's diagnosis including major depressive disorder and generalized anxiety disorder. Exhibit 93.

Mental status exam dated 5/09 shows claimant quite calm but only had minimal eye contact. Speech clear with very little pressure and normal productivity. Thoughts clear and focused. Affect was flat. Rated his mood 5 on a 0 to 10 scale. Does report suicidal thoughts. Reports hearing his dad and his mom's voices. Exhibit 57. Diagnosis included major depressive disorder without psychosis, panic disorder without agoraphobia, alcohol dependence in remission and learning disorder. Exhibit 56.

(14) The November 18, 2009 subsequent SHRT decision denied claimant on the basis of Medical Vocational Grid Rule 203.11 as a guide.

(15) Old medical evidence includes:

- (a) Many psychological evaluations discussing the connection between claimant's financial concerns and depression.
- (b) Signs and symptoms [REDACTED] [REDACTED] evaluation of 4/28/09 showing out of approximately 32 categories, claimant has severe in only 1--depressed mood. Claimant primarily has no indication of any problems with the numerous categories. See Exhibits 77, 78.
- (c) A psychological evaluation of 5/11/2009 indicating claimant is completely independent in his ADLs. Exhibit 16.
- (d) A 5/9/09 DHS-49 indicating basically normal physical eval except for depression. Claimant can engage in work and work-like settings in terms of sitting, standing, and walking on a full-time basis. Claimant can lift up to 50 pounds or more occasionally. The evaluator indicates no limitations with regards to 'mental limitations.' Exhibit 51.
- (e) A DHS-49B indicating no observations or comments at application.
- (f) A May 19, 2009 mental residual functional capacity assessment (DHS-49E) indicating that out of 20 categories claimant is markedly limited in 2. Exhibits 45, 46.

(g) Exhibit 18 indicates bronchitis, depression, COPD, hypertension.

(h) Exhibit 3 indicates COPD radiology report.

(16) New medical documentation submitted by claimant, dated 6/16/09, indicates that claimant is cooperative, and is concerned about not working and how he is going to pay his bills. Claimant complains of headaches. Claimant has respiratory difficulty, having smoked two packs of cigarettes in the past and now “smokes one pack.” RN educated claimant on risks of smoking. Claimant was counseled regarding diet.

(17) Claimant testified at the administrative hearing that he is independent with his activities of daily living. Claimant can prepare meals, shop, do dishes, laundry, does not need assistance with his bathroom and grooming needs and does yard work. Claimant stated that his lungs cannot handle snow removal. The department testified that claimant presented himself at the administrative hearing as quiet, clean, and cooperative. Claimant was anxious.

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.

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).

Claimant's primary severe condition involves claimant's severe depression and anxiety attacks. Claimant clearly has some problems and issues with regards to depression. Many of claimant's evaluations focus on claimant's concerns with regards to his financial difficulties and his depression. The severity of claimant's depression appears to be secondary to his

unemployment and financial issues. Nevertheless, the severity does not rise to the level of severity identified under federal and state law which would entitle an individual to statutory disability. As already noted, the ratings by [REDACTED] do not indicate severe signs and symptoms in approximately 32 categories. No does the mental residual functional capacity assessment indicate that claimant has 6 or more markedly limited boxes checked off. In fact, claimant was only markedly limited in 2 categories. For these reasons, claimant's depression does not meet statutory disability at Step 4 of the analysis. The analysis will continue with regards to claimant's alleged physical impairments.

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence with regards to claimant's physical 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 203.11. In reaching this conclusion, it is noted that the DHS-49A, dated 5/9/09, basically does not indicate that claimant has any physical restrictions with regards to engaging in work or work-like settings. As noted in the 5/9/09 evaluation, claimant can stand and/or walk about 6 hours in an 8-hour work day; claimant can sit about 6 hours in an 8-hour work day. Claimant does not need any assistive devices for ambulation and can occasionally lift up to 50 pounds or more. Claimant can meet his needs in the home. Claimant testified at the administrative hearing that he is capable of engaging in activities of daily living as well as representing the same at his appointments for his mental status evaluations.

With regards to claimant's COPD, and bronchitis, it is noted that claimant continues to smoke 1 pack or more per day and has a nicotine addiction. Of significance to this behavior, is the

dictate found in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988) decision.

With regards to the osteoarthritis, this is considered to be general aging absent an indication that it interferes with an individual's ability to engage in work or work-like settings. There is no medical evidence which would indicate the same.

It is also noted that claimant is collecting unemployment. Claimant testified that he has, in fact, represented to the unemployment office that he is capable and ready to engage in work. While this is not controlling in and of itself, it adds to the totality of the facts and circumstances in this case in finding that claimant's overall conditions do not rise to 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 Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 10, 2009

Date Mailed: December 14, 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.

JS/cv

cc:

