

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201023320

Issue No: 2009

[REDACTED] [REDACTED]
Hearing Date: May 6, 2010
Jackson 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 May 6, 2010, in [REDACTED]. Claimant was represented at the administrative hearing by [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance 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 September 25, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS). Claimant's medical file indicates that claimant has repeatedly applied for MA with the Michigan DHS.
2. Claimant applied for 3 months of retro MA.
3. On November 23, 2009, the MRT denied.
4. On November 30, 2009, the DHS issued notice.
5. On February 16, 2009, claimant filed a hearing request.

6. Claimant testified at the administrative hearing that she has applied and been denied three different times with SSA for SSI. Claimant testified under oath that she alleging the same impairments. It appears that claimant's prior denials have been due to excess income. Claimant has no work credits for RSDI.
7. On March 11, 2010, the State Hearing Review Team (SHRT) denied claimant.
8. As of the date of application, claimant was a 53-year-old female standing 5'6" tall and weighing 238 pounds. Claimant's BMI index is 38.4 classifying claimant as obese. Claimant has a tenth grade education.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a driver's license.
11. Claimant is not currently working. Claimant indicated that in her entire life she worked for approximately one period of six months where she was seasonal with [REDACTED] during tax season. Claimant classifies her work history as a housewife.
12. Claimant alleges disability on the basis of asthma, shortness of breath, hypertension, diabetes, gastric mass, sleep apnea.
13. The March 11, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
14. Medical evidence includes:
 - a) A [REDACTED] indicating claimant's functional capacity is Class 1: Patients with cardiac disease but without resting limitation of physical activity. Ordinary physical activity does not cause undo fatigue, palpitation, dyspnea or anginal pain. Claimant's therapeutic classification is Class A: Patients with cardiac disease whose ordinary physical activity need not be restricted. Exhibit 273.
 - b) An [REDACTED] indicating claimant returning for follow-up and doing well from a cardiac standpoint. Continues to loose weight. Impressions include diabetes, hypertension, improved dyspnea, stable atypical chest discomfort with negative stress test in April 2009, mild coronary artery disease, previous tobacco abuse, history of pericardial effusion, obesity. Exhibit 272.

c) An office visit dated 10/5/09 indicating claimant's BMI is 37 and that patient is an obese female.

d) A 7/9/09 DHS 49 indicating that claimant is classified within normal ranges as to her general assessment examination area, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neurological, and mental. Claimant has a history of constipation. Claimant has no restrictions with regards to standing/walking and sitting. As to physical limitations, the physician wrote "Patient OK to work with zero limitations." Claimant has no mental limitations. Exhibit 266.

e) A 4/22/09 stress echocardiogram concludes a negative test. No chest pain reported. Exhibit 255.

f) Lab reports indicating claimant has high cholesterol.

g) Claimant's regular treating physician has completed two DHS 49s. The first on 7/20/09 indicates that claimant's clinical impression is stable, but she is limited with regards to lifting up to 10 pounds. Claimant has all normal examination areas except for her left foot—barocylitis. A subsequent 10/29/09 evaluation indicates normal examination areas throughout except for cardiovascular. Claimant on this evaluation cannot lift any weight at all. Neither evaluation indicates that the conclusions on the form are corroborated by any lab or x-ray findings.

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 claimant does not meet statutory disability on the basis of Medical Vocational Rule Grid Rule 202.10 as a guide. In reaching this conclusion, it is noted that the great weight of claimant's medical evidence does not corroborate her complaints or self-reported symptoms. Claimant's cardiologist indicates that claimant can work without any significant restrictions. Claimant's stress test was negative. Claimant's heart classification scheme puts her at the least problematic functioning level for any potential heart patient. Claimant has no limitations of physical activity and ordinary physical activity is not expected to cause any undue fatigue, palpitation, dyspnea or anginal pain.

With regards to claimant's constipation, high cholesterol, obesity—the medical evidence does not indicate that these are significantly severe to meet statutory disability as it is defined under the law.

The only favorable evidence which is significant in claimant's medical file are the two 49s completed by her treating physician. However, the physician's only evaluation on page one with regards to the examination area do not indicate there is significant or severe problems. However, page two of both the documents do seem to indicate that claimant

has restrictions. One indicates she can lift up to ten pounds; the other says zero. However, while a treating physician is to be given significant weight, in this case, the physician's evaluation on page one is inconsistent with the conclusions on page two. The documents are patently ambiguous and not credible. Moreover, neither form has any corroborating medical documentation on question seven of page one to identify support for the conclusions. Thus, the statements are conclusionary per 20 CFR 416.927.

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.

The great weight of the medical evidence in this case does not support finding statutory disability and thus, the department's actions are denied.

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: April 27, 2011

Date Mailed: April 27, 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:

