

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: 2010-33020  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 1, 2010  
Kent 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 conference hearing was held on June 1, 2010.

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 January 12, 2010, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did apply for three months of retro MA.
- (3) On February 12, 2010, the MRT denied.

- (4) On February 17, 2010, the DHS issued notice.
- (5) On April 22, 2010, claimant filed a hearing request.
- (6) Claimant has been denied SSI by the Social Security Administration (SSA).

Claimant has had a final determination by SSA. None of the exceptions apply.

- (7) On May 11, 2010, the State Hearing Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 45-year-old standing 5'8" tall and weighing 161 pounds. Claimant has a high school diploma education.

(9) Claimant does not have an alcohol abuse problem or history. Claimant testified that he had a crack cocaine problem approximately five years ago. Claimant does not smoke.

(10) Claimant does not have a driver's license due to his self testimony: "Drug history..."

(11) Claimant is not currently working. Claimant testified that he has done very little work in the last 15 years. Claimant's work history has been much part-time and for cash. Claimant's work history has been pretty much unskilled.

(12) Claimant alleges disability on the basis of left knee and low back pain after twisted leg playing basketball (Exhibit #33). Diagnoses per SHRT report include acute myofascial lumbar strain and left knee internal derangement. Exhibit #44.

(13) The SHRT decision is adopted and incorporated by reference to the following extent:

... Medical Summary: Alleges disability due to torn ACL and MCL.... Had surgical repair on left anterior cruciate ligament, and had medial meniscal debridement. Exhibit #25.

In 1/2010 incisions were healed. Had some mild effusion. Some limitation of motion of the knee. Knee stability was intact, however. Had 2+ dorsalis pedis pulse and good sensation through entire left leg. X-rays looked good (records from DDS).

Recommendation: Evidence of record indicates condition improving and expected to improve 12 months from the date of onset or from the date of surgery. Denied for lack of duration per 20 CFR 416.909.

(14) A [REDACTED] progress note from [REDACTED], indicates that the physician filled out the form for the Friend of The Court medical needs in which: “Apparently he needs to prove he cannot work for child support. I did extend any disability from the surgery until about the five-month period when he should hopefully be back to regular activities....”

### 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).

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). After careful review of the substantial and credible evidence in the whole record, this Administrative Law Judge finds that claimant does not meet the duration requirement at Step 2 as required under law and policy for the reason set forth below.

As noted in the Findings of Facts, claimant had surgery on December 18, 2009. Claimant applied with the DHS on January 12, 2010. Medical evidence indicates as of a report completed for DDS dated January 20, 2010 that claimant has an expected disability from the surgery for about five months from the date of surgery or from the date of the clinical progress note. As such, claimant would not meet the 12-month duration requirement necessary to be eligible for statutory disability under the MA-P program pursuant to federal law and state policy. Thus, claimant's MA-P application is denied.

With regards to SDA, the only primary difference in the two programs is the duration requirement. In order to establish SDA eligibility, an individual needs to establish disability for a minimum consecutive period of 90 days.

After careful review of the substantial and credible evidence in the whole record, this Administrative Law Judge finds that claimant does meet the duration requirement for the SDA program and thus, will continue the analysis herein only as to the SDA.

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). With regards to claimant's SDA application, 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 as to claimant's SDA application. 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 could not do a full range of sedentary work pursuant to the medical evidence. Thus, this ALJ finds that claimant meets eligibility for the SDA program. Thus, the department is partially reversed as to the SDA.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides with regards to claimant's MA-P application:

- (1) The department's denial of claimant's MA-P was correct and,

Accordingly, the department's denial of claimant's MA-P application is hereby

**PARTIALLY UPHELD.**

- (2) In regards to claimant's SDA application, the department improperly denied claimant's SDA, and

Accordingly, on the SDA application, the department is partially **REVERSED.**

The department is ORDERED to make an assessment as to whether claimant meets the nonmedical criteria for the SDA program. If so, the department is ORDERED to open an SDA program from the month of application, and continuing. The department is ORDERED to review this case and in accordance with its usual policy and procedure.

/s/ \_\_\_\_\_  
Janice G. Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 9, 2010

Date Mailed: June 9, 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/tg

cc:

