

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

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██████████ ██████████  
██████████

Reg. No: 20103520  
Issue No: 2009  
Case No: ██████████  
Hearing Date: December 15, 2009  
Genesee 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, an in-person hearing was held. Claimant was represented at the hearing by ██████████  
██████████

**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 April 6, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 1 month of retro MA.
3. On June 10, 2009, the MRT denied.
4. On June 30, 2009, the DHS issued notice.
5. On August 19, 2009, claimant filed a hearing request.
6. Claimant has an SSI application pending with the Social Security Administration (SSA). Claimant has received prior denials based on disability by SSA. Claimant alleges worsening impairments. Jurisdiction falls under the exceptions based on claimant's testimony.

7. On November 4, 2009, the State Hearing Review Team (SHRT) denied claimant.
8. As of the date of application, claimant was a 34-year-old standing 5' tall and weighing 318 pounds. Claimant is classified as morbidly obese under the BMI medical index at a BMI of 62. Claimant has a high school diploma.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant does not have a driver's license. Claimant testified that she never in her life has obtained a driver's license.
11. Claimant is not currently working. Claimant has no work history. Medical evidence indicates that claimant took care of her mother as a chore provider but has never had substantial gainful employment.
12. Claimant alleges disability on the basis of morbid obesity, depression, sleep apnea, diabetes, hypertension.
13. The November 4, 2009 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...Page 1 is an added pulmonary function study, without tracings, would show some mild reduction in pulmonary function...Exhibits...normal kidney functions. Evidence of poorly controlled diabetes, obesity, hypertension. Claimant is receiving treatment for obstructive sleep apnea.

...Analysis: Evidence supports that claimant would retain the ability to perform tasks of light exertional, simple and repetitive nature. Despite poorly controlled physical impairments, no evidence of end organ damage or any neuropathy etc. associated with the conditions. From psychiatric stance, claimant has mild to moderate symptoms that would impose only mild limitations on ability to perform work related activities.

14. An August 31, 2009 State of Michigan psychological/psychiatric medical assessment report states that claimant is able to understand and complete simple tasks. Claimant may need redirection or additional support from supervisors when completing multi-step tasks. Claimant is diagnosed with major depressive disorder, recurrent, moderate. Exhibit E/6.
15. An April 21, 2009 physical assessment states in part that claimant has morbid obesity, and that patient was unable to do heel to shin test completely on account of obesity. The physician concludes with the following diagnoses: morbid obesity, obstructive sleep apnea, uncontrolled diabetes mellitus, hypertension, hypothyroidism. Patient has taken care of ailing mother and never worked. Exhibit E/8-9.
16. An April 21, 2009 neurological and orthopedic supplemental report is replete with some ability and restrictions regarding movement due to repeated comments "due to obesity," and "due to obesity."

### **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, as the record reflects claimant does not have any significant work history of record. Claimant is only 34 years old but virtually has not worked. Claimant took care of her ailing mother. Thus, 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 202.20 as a guide.

In reaching this conclusion, it is noted that the law classifies claimant as a very young individual at 34. Despite any problems or issues, the law presumes that claimant can be retrained at that age.

It is noted that the mental impairment assessment does note that claimant can do simple tasks. Thus, claimant's alleged mental impairment does not rise to statutory disability as it is not severe enough as defined under the law.

With regards to claimant's physical restrictions, as already noted, Congress removed the obesity listing shortly after removing drug and alcoholism. This reflects a strong view that such issues are in large part behaviorally driven. Claimant is not only obese but under the BMI index she is considered to be morbidly obese. See Exhibit 65.

With regards to the high blood pressure, and the diabetes, both of these are significantly related to the obesity. However, in and of themselves, the medical evidence does not indicate that they rise to statutory disability pursuant to the requirements found at 20 CFR 416.913.

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

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.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.

**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: March 16, 2011

Date Mailed: March 16, 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

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