

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201042094

Issue No: 2009/4031

[REDACTED] [REDACTED]
Hearing Date: August 10, 2010
St Clair 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, a in-person hearing was held on August 10, 2010. Claimant was represented by [REDACTED]
[REDACTED]

ISSUE

Did the Department of Human Services (DHS) properly propose to close claimant's Medical Assistance (MA) and State Disability Assistance (SDA) cases at review?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. In September 2009, claimant's MA and SDA cases were scheduled for a review.
2. Claimant was previously approved MA and SDA pursuant to an April 8, 2009 MRT decision.
3. On June 14, 2010, the MRT denied claimant continuing eligibility.
4. On June 21, 2010, the DHS issued notice.
5. On June 25, 2010, claimant filed a timely hearing request. The department reinstated both programs pending the outcome of the hearing.
6. At the time of the initial application where claimant was approved, claimant had a pending SSI application. Subsequent verification indicates claimant was denied and/or failed to appeal any denial.

7. On July 15, 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 February 23, 2011 SHRT once again denied claimant.
8. As of the date of review, claimant was a 39-year-old female standing 5' tall and weighing 260 pounds. Claimant's BMI is 50.8 classifying claimant as morbidly obese. Claimant has a high school education and cosmetology schooling.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a driver's license and can drive a motor vehicle.
11. Claimant is not currently working. Claimant last worked in 2005. Claimant's work history is unskilled.
12. Claimant alleges continuing disability on the basis of arthritis and psoriasis
13. The July 15, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
14. The subsequent February 23, 2011 SHRT decision is adopted and incorporated to the following extent:

New medical evidence is only old medical evidence which has no bearing on claimant's current functional status. Claimant's condition has shown significant medical improvement has taken place. Retains physical residual functional capacity to perform light exertional work. Denied per 20 CFR 416.920(e).
15. Other medical evidence includes prior medical evidence from April 28, 2008 indicating claimant can stand and/or walk at least two hours out of an eight-hour workday. Claimant can occasionally lift 25 pounds. Exhibits 8 and 9.
16. Prior medical documentation prior to the initial approval indicates a number of office notes indicating difficulty with orthopedic maneuvers predominantly due to body habitus and does compensate with a wide-based gait but is relatively stable. Exhibit 25. Speculation that the psoriatic arthritis which may involve knees but may be due more to degenerative arthritis due to body habitus. Exhibit 25.
17. Newer medical evidence indicating overweight at 260 pounds and a recommendation that claimant apply for Medicaid, so she could be worked

up for her arthritis. Exhibit 63 states: "She is going to apply for Medicaid and for some help in getting some training for other types of work."

18. New medical evidence indicating improvement per 11/10/09 office visit follow-up, 2/23/09 evaluation.
19. There is no medical evidence that the psoriasis is severe and interferes with claimant's ability to engage in work.

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.

Federal and state laws require very specific considerations in review cases. Applicable to the case herein, this policy meets federal regulations:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do

basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

As noted above, this analysis requires a seven step process. The first two steps require an assessment as to whether or not there has been improvement and whether or not that improvement is related to the individual's ability to engage in work or work-like settings. Pursuant to the Findings of Fact as delineated herein, both MRT and SHRT determined that claimant had improved and that the improvement was related to her ability to engage in work. The undersigned Administrative Law Judge has reviewed the medical evidence as it existed at the initial time of the approval, and finds that evidence supports finding improvement pursuant to documentation in the notes of claimant's new medical indicating improvement.

At the same time, the undersigned Administrative Law Judge is not in agreement with the initial MRT decision. As noted in the Findings of Fact, prior medical documentation basically indicates that claimant can work and can engage in work-like settings pursuant to Exhibits 8 and 9. Thus, this Administrative Law Judge finds in the alternative that the exception to whether an individual should have been initially approved in the first place applies.

It is noted prior to applying the five step sequential analysis, claimant has failed to establish that she has not been denied SSI by SSA. Evidence the undersigned Administrative Law Judge received from the Social Security Administration dated May 23, 2011, indicates that claimant has evidently received a final SSI determination and has no application pending. Thus, claimant in the alternative is not eligible. However, contrary to the MRT statements, closure is not required but a review is required.

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 addiction 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). MRT and SHRT found claimant ineligible on the basis of 20 CFR 416.920(e), This is the old cite for the new 20 CFR 416.920(f).

The undersigned Administrative Law Judge has reviewed the entire medical packet and concurs with the finding that claimant can return to past relevant work.

It is noted that claimant is a fairly young individual. Claimant's many problems are often attributed to her large body habitus. While claimant will eventually cause end organ damage and other diseases from her obesity as she ages as the medical evidence stands, does not rise to statutory disability. Obesity is not recognized as statutory disability. As noted above, Congress removed obesity from the listings shortly after the removal of drug and alcohol.

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.

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 proposed determination is hereby UPHeld.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 24, 2011

Date Mailed: August 25, 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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