

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

IN THE MATTER OF:



Reg. No: 201042682  
Issue No: 2009/4031  
Case No: [REDACTED]  
Hearing Date: September 9, 2010  
Van Buren 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 telephone hearing was held.

**ISSUE**

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) 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 September 8, 2009, claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On February 17, 2010, the MRT denied.
4. On February 19, 2010, the DHS issued notice.
5. On May 18, 2010, claimant filed a hearing request.
6. Claimant testified that he was just previously denied by SSA due to failing to file a timely appeal. Claimant received an unfavorable decision by a federal Administrative Law Judge from SSA on May 20, 2009. A review of that decision indicates claimant had sufficient work credits and had his claim reviewed 20 CFR 404.1571 et seq. Thus, jurisdiction is proper.

7. On June 4, 2010, the State Hearing Review Team (SHRT) denied claimant.
8. As of the date of application, claimant was a 48-year-old standing 5'7" tall and weighing 190 pounds. Claimant has a high school diploma.
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 2008 in maintenance and house cleaning. Claimant has also worked in a machine shop.
12. Claimant alleges disability on the basis of: head trauma, shattered neck bones, chainsaw injuries, bone spurs. See Exhibit 52.
13. The July 20, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
14. Medical evidence includes:
  - a) A May 29, 2010 [REDACTED] evaluation regarding claimant's "chainsaw injury" concludes no joint instability, enlargement, or effusion. Grip strength intact. Dexterity unimpaired. Patient could pick up a coin, button clothing, open a door. No difficulty getting on and off the exam table, no difficulty heel and toe walking, and no difficulty squatting. Range of motion of the joints by evaluation all within normal or optimal. Conclusions: no significant difficulty with orthopedic maneuvers. Station was stable. Exhibits 24-26.
  - b) A 6/15/2010 psychological assessment by [REDACTED] concludes mood disorder due to medical condition; adjustment disorder with mixed anxiety and depressed mood. Exhibit 29.
  - c) A 1/16/2007 neurological assessment by [REDACTED] with regards to neck pain, right shoulder pain, and weakness in the right hand found that claimant had a normal gait, heel toe and tandem gait unremarkable, able to stand on either lower extremity, able to squat and recover, Romberg's negative, back exam was unremarkable without spasm and no point tenderness and a full range of motion. On and off the exam table without difficulty. Straight leg raising negative to 90 degrees; Patrick's sign was negative. Motor, sensory, reflex and cerebella exams normal. MRI scan indicates some disc bulges and mild degenerative changes but no significant canal or nerve root compromise. Normal neurologic exam. The physician found no evidence of central or peripheral nerve condition. The

physician states: "I only suggest conservative measures including heat or ice to the neck and over the counter medications." Exhibits 56-59.

d) CMH notes indicating AXIS I dysthymic disorder and AXIS II personality disorder NOS. See Exhibits 72 and 76.

15. Claimant's complaints and description of symptoms are not consistent with the medical evidence.

### **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). SHRT denied claimant on the grounds of Step 2 of the analysis. SHRT indicated that claimant's condition was not severe pursuant to 20 CFR 416.920(c). This second step is a *de minimus* standard. The undersigned Administrative Law Judge disagrees with SHRT in finding a non-severe impairment. The psychological diagnoses clearly shows a severe impairment sufficient to overcome the *de minimus* standard at Step 2 and thus, the analysis will continue with regards to claimant's psychological complaints. It is noted that this Administrative Law Judge does agree with SHRT with regards to claimant's physical impairments. The analysis continues with regards to the alleged mental impairment(s).

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 mental demands of the work done by claimant in the past. 20 CFR 416.920(f). After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that claimant does not meet statutory disability pursuant to the alleged mental impairment(s) on the basis of Step 4 of the analysis.

In reaching this conclusion, it is noted that the medical evidence with regards to claimant's alleged mental impairment(s) do not indicate that these alleged impairments prevent claimant from engaging in work and work-like settings. Under the law, the law presumes that claimant retains the mental capacity to work.

This Administrative Law Judge wishes to note that claimant's complaints, testimony, and handwritten notes are indicative of severe and limiting conditions and symptoms as alleged by claimant. However, even granting claimant credibility, this Administrative Law Judge is not a physician and this Administrative Law Judge does not make a medical decision. This Administrative Law Judge is charged with the duty to assess as to whether the medical evidence, taken as a whole, meets the statutory disability of disability. Put another way, this Administrative Law Judge must make a determination if the department's denial was sufficient under the law based upon the evidence the Medical Review Team had in their review of claimant's medical condition. This Administrative Law Judge does in fact find that the medical evidence is legally sufficient to conclude that claimant does not meet the definition of statutory under the law. Claimant's complaints must be corroborated by the medical evidence. Claimant's complaints and descriptions of his symptoms are not consistent with the great weight of the objective medical evidence pursuant to the requirements at 20 CFR 416.928. As such, this Administrative Law Judge must uphold the department's denial.

This Administrative Law Judge also wishes to note that a statement of disability is insufficient as given by claimant. It is noted that even if there was a statement by a

physician, absent corroborating medical evidence, statutory disability cannot be found under the law.

**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 5, 2011

Date Mailed: April 5, 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:

