

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201051625
Issue No: 2009/4031
Case No: [REDACTED]
Hearing Date: November 10, 2010
Saginaw 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 November 10, 2010. Claimant was represented by [REDACTED]

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 January 20, 2010, claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 1 month of retro MA.
3. On April 29, 2010, the MRT denied.
4. On April 29, 2010, the DHS issued notice.
5. On July 22, 2010, claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has been denied by SSA for SSI. Claimant testified that he is alleging the same impairments. Claimant testified that he did not appeal. An SOLQ run on April 20, 2011 confirms claimant's statements.

7. On September 9, 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 December 21, 2010 SHRT once again denied claimant.
8. As of the date of application, claimant was a 33-year-old male standing 6' tall and weighing 245 pounds. Claimant has a 12th grade education.
9. Claimant testified at the administrative hearing that he quit drinking approximately one and one half years previously but was not an alcoholic. Claimant smokes cigarettes. Claimant has a nicotine addiction. Claimant testified that he has no drug problem or history.
10. Claimant testified that he has a driver's license and can drive an automobile.
11. Claimant is not currently working. Claimant's work history is unskilled. Claimant worked while incarcerated as a janitor/floor buffer. Claimant has worked at [REDACTED] and at a plastic plant in production work.
12. Claimant alleges disability on the basis of gastroparesis, diabetes, and a damaged esophagus.
13. The September 9, 2010 and subsequent December 21, 2010 SHRT decisions are adopted and incorporated by reference herein.
14. In December 2009 claimant was admitted several times due to chronic abdominal pain, chronic nausea, vomiting. Suspicion of drug seeking behavior. Later admission indicated claimant could have gastroparesis. Noted claimant had not been compliant with medications or therapeutic regimen. Multiple ER visits and switched between two hospitals for treatment of his complaints. Weight was 230 pounds despite report of intractable vomiting.
15. An esophagogastroduodenoscopy dated December 2009 indicated reflux versus Barrett's esophagus and gastropathy versus gastritis. Later information indicates claimant had Barrett's esophagus.
16. Admitted May 2010 due to similar complaints and other admissions. Drug screen positive for cocaine and opiates. Very little apparent distress. Had some epigastric tenderness. Exam was otherwise unremarkable. Weight 246 pounds. On day of discharge refused lab testing and refused his oral home medications.

17. Record held open for submission of additional medical documentation issued to SHRT. May 2010 admission history and physical indicates treating physician note that claimant is a drug seeker. History and physical noting that has been coming in three to four times per month for at least ten months. Note indicates patient demanding particular narcotic pain medication.
18. Claimant testified that he cannot control his gastro problems as he was told it was due to his diabetes. Contrary medical documentation in a July 18, 2010 admission note indicates: "Evaluated by gastroenterology with probable delayed gastric emptying versus a diabetic gastroparesis." Diabetic since age 13, poorly controlled on insulin.

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.

Prior to any substantive review, jurisdiction is proper. Specifically applicable to the case herein, regulations at 42 CFR 435 does not allow the state department to make a substantive review where there has been a final SSI determination. That federal regulation is found in the following department policy:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

Relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until the determination is changed by the SSA." 42 CFR 435.541(a)(b)(i). These regulations further provide: "If the SSA determination is changed, the new determination is also binding on the agency." 42 CFR 435.541(a)(b)(ii).

In this case, claimant testified that he received a final determination from SSA on his SSI application and did not appeal. Claimant further testified under oath that he is alleging the same impairments. None of the exceptions apply. Under 42 CFR 435.541, the undersigned Administrative Law Judge has no jurisdiction to proceed with a substantive review. Claimant's testimony is corroborated by an SOLQ the undersigned Administrative Law Judge received on April 20, 2011.

In the alternative, it is noted that should the sequential analysis be applied, relevant federal regulations 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 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 33 years old.

It is noted that claimant's complaints were quite vague in general and do not meet the requirements of the federal regulations found at 20 CFR 416.928 and .927. Nor do claimant's complaints meet the requirements at 20 CFR 416.929. Moreover, it is noted that claimant's failure to follow recommended treatment program does not meet the requirements found at 20 CFR 416.930. Claimant's complaints and description of symptoms are not consistent with the great weight of objective evidence pursuant to the requirements found at 20 CFR 416.928.

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 upheld

Accordingly, the department's determination in this matter is correct.

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

Date Signed: June 2, 2011

Date Mailed: June 2, 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:

