

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: 2010-5580
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 12, 2010
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, a telephone hearing was held on January 12, 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 7/16/09 claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 8/28/09 the MRT denied.
- (4) On 9/10/09 the DHS issued notice.

(5) On 9/16/09 claimant filed a hearing request.

(6) Claimant has an SSI application pending with the Social Security Administration (SSA).

(7) On 11/10/09 the State Hearing Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 58-year-old female standing 5' 2 ½" tall and weighing 174 pounds. Claimant is classified as obese under the BMI Medical Index.

(9) 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 July, 2008. Claimant testified at the administrative hearing that claimant collected workman's compensation from 9/07 to 6/08. Claimant collected unemployment from 7/08 until 9/09. Claimant testified that she has received a letter that she is eligible for an extension. Claimant is actively seeking work for a job such as a cashier. Claimant stipulated at the administrative hearing that she could do a sedentary job.

(12) Claimant is requesting medical assistance on the grounds that: "I need a hernia repair and a hysterectomy." Claimant is alleging disability based upon a self report found in exhibit 21 of the following: Detached retina, hernia, and uterine fibroid. Exhibit 21

(13) The 11/10/09 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.

(14) Medical evidence includes:

- a) A Michigan Disability Determination Range of Motion assessment indicating that claimant's cervical spine, lumbar spine, shoulder, elbow, hip, knee, wrist and hands-fingers are all normal. Claimant has all normal indications for the ankle except for the right dorsi-flexion which has a normal

range of 0 to 20 with claimant's rating at 0 to 5. Exhibits 16 and 17.

- b) A board certified evaluation for DDS and the SSA by the Dr. Friedman, M.D., on June 15, 2009 concludes: "based upon today's examination, the claimant should be able to work eight hours in a day. She would require restrictions relative to standing/walking. She should not stand or walk continuously for greater than 30 minutes at a time. No other restrictions or limitations appear to be necessary on the basis of today's examination from a neuro-musculoskeletal perspective." Exhibit 20.

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, the first step looks at whether an individual is engaged in substantial gainful activity 20 CFR 416.920(b). This step will find no statutory disability where an individual can work despite alleged impairments or is working.

In this case, facts on the record indicate that claimant stipulated at the administrative hearing that she was capable of working. Claimant is in fact actively seeking employment. Moreover, at the time of the application, claimant was receiving unemployment benefits and based upon self testimony at the administrative hearing, is eligible for an extension and will continue to receive unemployment. Individuals who receive unemployment represent to the unemployment agency that they are fit and ready for work. Moreover, Claimant stipulated that she could do a sedentary job. Under these facts and circumstances, claimant does not meet statutory disability at step 1 of the sequential analysis and thus, no eligibility is shown.

It is noted in the alternative, that should the sequential analysis be applied further in this matter, the undersigned Administrative Law Judge would concur with the denial found by the State Hearing Review Team of its 11/10/09 decision. Exhibits 52 and 53.

For these reasons, and for the reasons stated above, statutory disability is not shown.

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/ _____
ALJ Name
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 16, 2010

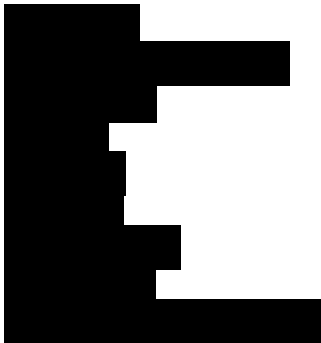
Date Mailed: April 16, 2010

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/lk

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