

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201118642

Issue No: 2009

[REDACTED]

Hearing Date: June 7, 2011  
Jackson 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 June 7, 2011 in [REDACTED]. Claimant was represented by [REDACTED], collecting on behalf of a hospital.

**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 19, 2010, claimant applied for MA with the Michigan Department of Human Services (DHS). Claimant's representative stipulated at the administrative hearing that the issue herein is for a closed-ended period of time—from claimant's application until May, 2011.
2. Claimant applied for 1 month of retro MA.
3. On May 7, 2010, and subsequently November 23, 2010, the MRT denied claimant.
4. On May 14, 2010, the DHS issued notice.
5. On August 11, 2010, claimant filed a hearing request.

6. Claimant has an SSI application pending with the Social Security Administration (SSA). Claimant testified at the administrative hearing that she has been denied on two different occasions.
7. On March 1, 2011, the State Hearing Review Team (SHRT) denied claimant.
8. As of the date of application, claimant was a 52-year-old female standing 5'2" tall and weighing 135 pounds. Claimant has an unknown number of years in college. Claimant testified that she was going to college until March, 2010. Claimant has a CNA license.
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 an automobile.
11. Claimant is not currently working. Claimant testified that she is returning to work on Monday, June 13, 2011. Claimant's work history is unskilled and semi-skilled. Claimant has worked as a medical instructor, in production/stamping plant, [REDACTED], and as a medical assistant/office manager.
12. Claimant alleges disability due to tracheal narrowing, diabetes, pain in the lung area, back problems, short term memory problems.
13. The March 1, 2011 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

Medical Summary: Admitted 3/10 due to diabetic ketoacidosis. Abnormal ventrillary response to acidosis. Placed on mechanical ventilation. Exhibit 52. Condition improved with treatment and extubated. Admitting features of metabolic and encephalopathy were totally resolved at discharge. Exhibit 51.

In 7/2010 claimant had shortness of breath. CT scan showed narrowing near the thoracic inlet. Great difficulty with walking due to shortness of breath. Exhibit 81.

In 8/2010 much improved after tracheal dilation. There was tracheal stenosis in the mid portion of her trachea and her one of her options was to have repeat dilation. Exhibit 79.

On 9/9/2010 claimant seen after endoscopy and dilation. Good progress and was able to breath and exercise without difficulty. Exhibit 78. In 9/14/2010 started having cough and green sputum production and a low grade temperature. On exam, had very reasonable air entry bilaterally and her heart sounds were normal. Chest x-ray showed no infiltrates. Started on medication for bronchitis. Exhibit 77. In 10/10 thoracic surgeon indicated claimant's examination within normal limits including her mental status exams. Exhibits 82-83.

Analysis: In 10/10 examination was within normal limits including her mental status.

Recommendation: Denied due to duration as expected to improve within 12 months of onset. 20 CFR 416.909.

14. At hearing, claimant was unclear as to whether she was collecting unemployment at application. Claimant believed it ended in March 2010. The department's inquiry showed unemployment benefits continued through November, 2010.
15. A DHS-49 completed October 26, 2010 showed claimant within normal limits with regards to general, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neurological, and mental. Claimant's condition was stable. Exhibits 82-83.
16. An August 10, 2010 assessment indicates claimant definitely improved much after the tracheal dilation.
17. A September 14, 2010 assessment indicates exam very reasonable air entry bilaterally and heart sounds normal. Chest x-ray shows no infiltrates. Exhibit 77.
18. Labs collected on April 15, 2010 indicates that claimant has high cholesterol.

### **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).

Step 1 of the analysis requires an assessment as to whether an individual is ineligible due to work. 20 CFR 416.920(b). In this case, evidence indicates that claimant was collecting unemployment at application, and continued to collect the unemployment despite her memory until September, 2010. The receipt of unemployment is not presumptive SGA. Ruling the ambiguities in claimant's favor, this Administrative Law Judge will continue the analysis.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). As noted in the Findings of Fact, SHRT denied claimant on the basis of Step 2 of the analysis as the evidence does not show duration. The undersigned concurs and agrees with the SHRT analysis. Specifically, claimant suffered the reaction in March, 2011. At that time, claimant was admitted with diabetic ketosis and was required mechanical ventilation and also had metabolic encephalopathy. However, these conditions were totally resolved at discharge. Claimant had subsequent tracheal narrowing following the mechanical ventilation. Claimant underwent a tracheal dilation on two different occasions with a good response. In 10/2010, claimant had an evaluation showing all normal limits with regards to general, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neurological, and mental. Claimant's condition was stable.

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.

After careful review of the substantial and credible evidence on the whole record, the undersigned Administrative Law Judge finds that the evidence in this case simply does not rise to statutory disability on the basis of 20 CFR 416.909; 20 CFR 416.913; 20 CFR 416.927 and .928. 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/ \_\_\_\_\_  
Janice G. Spodarek  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: June 13, 2011

Date Mailed: June 13, 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:

