

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-47328
Issue No: 2009

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 [REDACTED]. Claimant was represented by [REDACTED]. The claimant appeared and provided testimony. [REDACTED] appeared and provided testimony on behalf of the department.

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 [REDACTED], claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did apply for retro MA.
3. On [REDACTED] the MRT denied.
4. On [REDACTED], the DHS issued notice.
5. On [REDACTED], claimant filed a hearing request.
6. Claimant testified at the administrative hearing that she has an SSI application pending with the Social Security Administration (SSA).

7. On [REDACTED], 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 [REDACTED] [REDACTED] once again denied claimant.
8. As of the date of hearing, claimant was a [REDACTED] standing 5'7" tall and weighing 191 pounds. Claimant has a high school diploma and is capable of reading, writing and basic math.
9. Claimant testified that she smokes approximately five cigarettes per day. Claimant testified that she does not drink alcohol or use any illegal or illicit drugs. The medical records show claimant has a history of IV drug use, including the use of heroin as recent as [REDACTED].
10. Claimant has a driver's license and indicated that she is sometimes able to drive.
11. Claimant is not currently working. Claimant last worked approximately [REDACTED] [REDACTED] as a caregiver, approximately 12 hours per week. Prior to that claimant worked as a cook, a waitress and bartender in a bar.
12. Claimant alleges disability on the basis of arthritis, fibromyalgia, a bulging disk in the back and a herniated disk in the neck.
13. A [REDACTED] neurology progress note indicates the claimant is being treated for chronic widespread fibromyalgic and myofascial pain syndrome, cervical and lumbar osteoarthritic facet joint spondylosis, paraspinal tendonitis and migraine headaches. The physician indicated the client was doing wonderful and her exam was normal. She had no complaints. She was given a sample of Lyrica. Her methadone, soma and phenergan were refilled. She had no other new onset neurological deficits and the neurological exam was pretty good. Her strength was 5/5 in all four extremities, no pronator drift. She had normal sensation to light/sharp touch, vibration and joint position. Her deep tendon reflexes were 2/5 and symmetrical. Plantar reflex showed down-going toes bilaterally. Her gait was within normal limits.
14. On [REDACTED] an independent medical examination was conducted. Physical examination found multiple excoriations around the lips and on the upper extremities due to picking. There was no evidence of joint laxity, crepitation or effusion. Her grip strength remained intact. Dexterity was unimpaired. The client could button clothing and open a door. She had no difficulty getting on and off the examination table. Mild difficulty heel and toe walking and mild difficulty squatting. Straight leg raising was negative. There were no paravertebral muscle spasms.

Cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pin prick. Romberg testing was negative. The client walked with a small step gait without the use of an assistive device. Reflexes were 2+ on both sides. The physician opined that her degree of physical impairment appeared mild to moderate and her long term prognosis appeared fair.

15. A [REDACTED] follow up visit with the neurologist found the client to have positive tenderness on palpation of the cervical and lumbar area. She had a positive facet loading test in the cervical area at C5/C6/C7. Her pain did increase in extension and lateral rotation and lateral bending, especially towards the left side. There was a positive Tinel's sign over the occipital ridge area bilaterally. Spurling maneuver does reproduce tightening sensation of the posterior part of the head, posterior part of the shoulder and not extending to the arm. Full range of motion in the shoulder joints bilaterally. In the back, there was a positive facet loading test at L3/L4/L5 bilaterally. The pain did increase in extension and lateral rotation and lateral bending with limitation of range of motion slightly in extension and lateral rotation because of the pain. Straight leg raising test is positive in the left leg at 45 degrees. Patrick test was positive in the left side. Full range of motion in the hip joints bilaterally. Multiple tender points of fibromyalgia in the anterior aspect of the shoulder, outer part of the upper ribs, knees, elbows and hips. Her strength was 5 out of 5 in all four extremities, no pronator drift. There was a deficit with sensory perception to light touch to the middle of the legs bilaterally and symmetrical in both lower extremities and to the wrists. Her deep tendon reflexes were 2/5 and symmetrical, plantar reflex showed down-going toes bilaterally. Her gait was within normal limits.
16. The claimant was admitted to the hospital on [REDACTED] with generalized weakness and tiredness. Her liver enzymes were greatly elevated. She was positive for Hepatitis C and her RNA came back to be positive. She was discharged on [REDACTED].
17. An [REDACTED] medical examination report indicates the claimant has a history of fibromyalgia with multi joint pain, muscle spasms, nerve pain, low back pain, hip pain and bilateral knee pain. Examination areas were noted as normal except for a decreased range of motion of the lumbar spine and mild bilateral knee crepitation. Her mental status was noted to be anxious. The physician opined that she should only occasionally lift up to 20 pounds during an 8 hour work day and that she should stand and/or walk less than 2 hours in an 8 hour work day.
18. On [REDACTED] the claimant was admitted to the hospital with a febrile illness going on for a couple of weeks. The claimant indicated she had a generalized weakness and lethargy for about 2 to 3 weeks and then

also started having some shortness of breath, coughing, nausea and poor appetite. The client reported to the physician that she had been diagnosed with Hepatitis C about a year ago and that she had been a heroin user with her last use approximately 3 months prior. The client reported she is a smoker and had been smoking about one pack per day, but for the last 2 to 3 weeks, was down to 4 to 6 cigarettes per day due to feeling sick. Physical examination found the claimant did have some breath sounds diminished at the bases. There were a few scattered rhonchi and crackles, left more than the right. The client did have multiple excoriations for self picking that were present. The claimant was diagnosed with chronic obstructive pulmonary disease (COPD) exacerbation and was discharged on [REDACTED].

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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).

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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8.

In reviewing all of the medical evidence presented, it is the opinion of this ALJ that the claimant is capable of at least sedentary work. It was the opinion of the SHRT that the client would retain the capacity to perform a wide range of simple and unskilled light work. This ALJ would tend to agree with this opinion. First off, it is noted that there is no MRI's or x-rays in the file that show the claimant's current level of disk problems in the claimant's back or neck. There appears to be some limitation of motion, but no evidence of significant neurological abnormalities and no muscle wasting or atrophy. However, even if this ALJ accepts claimant's treating physician's medical examination report completed on [REDACTED] and the limitations that are indicated in that report, the claimant would still be capable of sedentary work. Therefore, even in construing the evidence in light most favorable to the claimant, the claimant would at a minimum be capable of sedentary work.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

At the last step of the sequential evaluation process, the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. 20 CFR 404.1520(g) and 416.920(g).

Claimant has submitted insufficient objective medical evidence that she lacked the residual functional capacity to perform at least sedentary work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based

upon the fact that she has not established by objective medical evidence that she could not perform at least sedentary work. Under the Medical-Vocational guidelines, a younger individual ([REDACTED] with at least a high school education or more and an unskilled or no work history who can perform at least sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

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 determination in this matter is **UPHELD**.

/s/ _____
[REDACTED]
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.

2011-47328/SLM

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.

SLM/jk

cc:



MAHS