

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20115415
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 23, 2011
Lapeer 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 February 23, 2011. Claimant was represented by [REDACTED]

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 June 22, 2010, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 2 months of retro MA.
3. On July 9, 2010, the MRT denied.
4. On July 14, 2010, the DHS issued notice.
5. On September 30, 2010, claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he had an SSI application pending with SSA. Pursuant to verification received by the undersigned Administrative Law Judge, on May 27, 2011 claimant had no application pending. Claimant has received a final denial by SSA on his

SSI. Claimant indicated at the administrative hearing would have at this point in time have had a decision by an Administrative Law Judge. Due to the failure of verification, claimant has presumptively received an unfavorable Administrative Law Judge decision.

7. On November 29, 2010, the State Hearing Review Team (SHRT) denied claimant.
8. As of the date of application, claimant was a 48-year-old male standing 5'10" tall and weighing 205 pounds. Claimant has a high school diploma.
9. Claimant does not have an alcohol/drug abuse problem or history.
10. Claimant does not currently drive a motor vehicle due to seizures. Claimant has been advised not to drive for six months from his last seizure activity.
11. Claimant is not currently working. Claimant last worked in January 2009 on a retraining program. Claimant's work history is unskilled.
12. Claimant alleges disability on the basis of seizures, and a history of viral meningitis. Claimant also had a recent bout of "SEPSIS" at the time of hospitalization for which his representative is collecting.
13. The November 29, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

MRI of brain done 4/10 showed tiny enhancing lesions on the right frontal lobe subcortical white matter. Physical exam of 5/10 reported normal gait and station. Normal coordination. Noted he is doing better since the addition of medication for seizure control. Analysis: Objective medical evidence does not establish a disability at the listing or equivalent level. Collective medical evidence shows that the claimant is capable of performing a wide range of light work. He should avoid unprotected heights and hazardous machinery. Denied per 202.21 as a guide.
14. Claimant indicated at the administrative hearing that he was not familiar with any history of meningitis.
15. There is no evidence that the recent bout of streptococcus pneumococcal meningitis statutorily disabling.
16. Claimant was hospitalized from 4/25 to 4/29 for seizure disorder and discharged in stable status. Claimant was reported to be feeling much better and no seizure disorder was reported while hospitalized.

17. A 9/1/10 neurological assessment found examination areas to be normal with regards to general HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neurological, and mental. Exhibits 13 and 14.
18. Claimant testified at the administrative hearing that he does some light housework including dishes and vacuuming.

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.

Prior to any substantive review, jurisdiction is paramount. As noted in the Findings of Fact, the verification received from Social Security Administration on May 27, 2011 does not indicate that claimant has a pending SSI application with SSA. Claimant indicated at the administrative hearing that he was waiting for a hearing with a federal Administrative Law Judge. Presumably, based upon the verification from SSA, claimant had that hearing and did not receive a favorable decision. No verification has been submitted to establish the same. Pursuant to the federal regulations found at 42 CFR 435.541, there is no jurisdiction. In the alternative, the sequential analysis will be applied.

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.

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 concurs with the SHRT decision in finding claimant not disabled pursuant to Medical Vocational Grid Rule 202.21 as a guide.

In reaching this conclusion, 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.

It is further noted that claimant did not have any recall with regards to any history of meningitis.

The medical evidence as a whole, indicates seizure problem which the medical evidence does not indicate it would rise to statutory disability for a continuous period of 12 months or more. Claimant has no other statutorily disabling impairments which federal and state regulations. The department's actions must be upheld.

In the alternative, as noted in the discussion in the decision and order herein, claimant would be denied pursuant to 42 CFR 435.541.

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 for the reasons stated herein, including the alternate reasons regarding jurisdiction.

Accordingly, the department's denial is hereby UPHeld.

/s/

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

Date Signed: August 24, 2011

Date Mailed: August 25, 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:

