

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

IN THE MATTER OF:



Reg. No: 201128484  
Issue No: 2009/4031  
Case No: [REDACTED]  
Hearing Date: July 7, 2011  
Calhoun County DHS (District #21)

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, a telephone hearing was held on July 7, 2011. The record closed on August 9, 2011.

**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 October 7, 2010, claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On January 25, 2011, the MRT denied.
4. On January 27, 2011, the DHS issued notice.
5. On April 5, 2011, claimant filed a hearing request.
6. Claimant has an SSI application pending with the Social Security Administration (SSA). Claimant was denied by a federal Administrative Law Judge and filed an appeal on September 27, 2011.
7. On April 26, 2011, 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 August 9, 2011 SHRT once again denied claimant.

8. As of the date of application, claimant was a 45-year-old female standing 5'6" tall and weighing 169 pounds. Claimant testified she was approximately 180. Claimant has one year of college.
9. Claimant testified that she 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 last worked in 2008 working approximately 30 hours per week doing billing for a psychiatrist. Claimant describes her work as "Code Biller." Claimant's work history is sedentary, semi-skilled employment.
12. Claimant alleges disability secondary to lumbar radiculopathy, depression and anxiety. Purported MS. New medical evidence adds depression and anxiety.
13. The April 26, 2011 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...Consultative exam: claimant states they have not received a diagnosis of MS but believe they have MS. Examination findings normal. Claimant did appear to be tired and depressed. Exhibit 87. Treating medical source opinion: likely disabled indefinitely secondary to MS. Exhibit 49. Consult evaluation: depression and anxiety. Residual abilities: noted for moderate limitations.
14. The subsequent August 9, 2011 SHRT decision is adopted and incorporated to the following extent:

Additional evidence reviewed and given full diligence but not found to significantly affect the prior SHRT determination Denied per 204.00 as a guide.
15. Claimant testified that she received MA and FIP for 16 years until her youngest child moved out.
16. Claimant testified that her activities of daily living are very limited.
17. Medical evidence includes treating source opinions that claimant could not do her usual occupation indefinitely; cannot do any work for one year. The findings are based upon a diagnoses of MS.

18. A December 1, 2010 evaluation for Michigan DHS states in part:

...This is a 45-year-old Caucasian female with normal exam except for the findings that she is sleepy (probably a result of prescription drug addiction to [REDACTED] and opiates in the form of [REDACTED] and clearly a flat affect. She appears very depressed. Her anti-anxiety drug [REDACTED] is known to cause depression as a side affect...Unfortunately neither of the drugs she is taking are approved for the treatment of depression and in many cases are known to make depression worse. The simultaneous use of these medications should be of great concern! I can find no valid reason why she needs to be on an opiate. She is clearly addicted to opiates and needs drug addiction counseling and treatment with a certified addiction specialist...

19. A mental residual functional capacity assessment does not markedly limit claimant in at least six categories as would be required under the listings.

### **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).

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 finding that claimant is not eligible pursuant to Medical Vocational Grid Rule 204.00 as a guide.

The 6<sup>th</sup> 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 (6<sup>th</sup> 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.

It is noted that claimant's treating physician's conclusions are not consistent with the great weight of the objective medical evidence pursuant to the requirements at 20 CFR 416.913. Of specific concern, is the department's evaluator who questions the prescriptions, thus raising credibility issues. Moreover, the MS diagnosis has not been clearly delineated by any of the neurologists that claimant has seen. Nevertheless, the treating physician indicates that seems to be a working diagnosis.

It is also noted that claimant's complaints and descriptions of symptoms are not consistent with the great weight of the objective medical evidence pursuant to the requirements found at 20 CFR 416.913.

The physical exam claimant had with the internist does not find limited with regards to any physical issues.

For these reasons, and 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/ \_\_\_\_\_  
Janice G. Spodarek  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: October 13, 2011

Date Mailed: October 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.

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