

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg. No: 20113662

Issue No: 2009

Case No: [REDACTED]

Reconsideration Order Date: November 30, 2010  
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

**RECONSIDERATION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; MAC R 400.919(3). An evidentiary hearing was held on February 9, 2010. Claimant was represented at the administrative hearing by authorized hearing representative [hereinafter AHR]—[REDACTED] collecting on behalf of a hospital.

**ISSUES**

1. Is there jurisdiction to proceed with a substantive review?
2. 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 5, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On June 12, 2009, the MRT denied.
4. On July 22, 2009, the DHS issued notice.
5. On October 8, 2009, claimant filed a hearing request.
6. On February 9, 2010, an evidentiary administrative hearing held in [REDACTED]. Claimant and claimant's AHR were sworn in and testified under oath that as of the administrative hearing date,

an SSI application pending with Social Security Administration (SSA). No exceptions were indicated by the AHR or claimant.

7. On April 23, 2009, February 16, 2010, the State Hearing Review Team (SHRT) denied claimant.
8. On September 29, 2010, the undersigned Administrative Law Judge issued a hearing Decision and Order (Reg No 2010-9875) denying claimant pursuant to 42 CFR 435.541.
9. On October 27, 2010, claimant's AHR requested a "rehearing/reconsideration" on the grounds that there was a misapplication of law or policy that led to an erroneous decision and order in the Administrative Law Judge's decision stating:

The Administrative Law Judge erred in her Decision and Order on pg 4 [sic] she writes: 'claimant's claim was considered by SSA and benefits denied.' This is not correct there as no disability determination has been made by SSA...therefore the Administrative Law Judge is using the policy erroneously and the Administrative Law Judge should have made a disability determination for [claimant].

10. On February 17, 2011, the undersigned was handed the file and informed that supervisory Administrative Law Judge Mayra Nelson-Davis issued an Order of Reconsideration (Reg No 2011-3662).
11. Claimant's AHR and claimant's testimony under oath was inconsistent with the unverified statements made for a rehearing or reconsideration by the AHR in the subsequent request
12. Claimant and claimant's AHR were not credible witnesses.

## ISSUE 2

13. As of the date of application, claimant was a 54-year-old standing 5' tall and weighing 100 pounds. Claimant is licensed as a dental assistant.
15. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not have a nicotine addiction. Claimant testified that she used [REDACTED]" until approximately one year prior to the hearing.
16. Claimant has a driver's license and can drive an automobile.
17. As of the date of the administrative hearing, claimant was engaged in work. Claimant testified that she was working [REDACTED] hours per week at [REDACTED] per hour resulting in SGA of [REDACTED] per month. Medical evidence in the file indicates

that as of the date of application, claimant was engaged in 24 hours of work per week resulting in [REDACTED] per month. Claimant indicated that she had been a dental assistant but she was demoted to working as a billing clerk.

18. Claimant alleges disability due to renal failure, arthritis, heart stents, shortness of breath.
19. The December 23, 2009 and subsequent February 16, 2010 SHRT decisions are adopted and incorporated by reference herein. SHRT found that claimant was capable of performing past relevant work—billing clerk.
20. Medical evidence includes:
  - a) A 10/7/08 radiology report concluding no aortic dissection in the thoracic or abdominal aorta. No aneurysmal dilation present.
  - b) A 10/2/08 radiology report indicating a view of the chest indicates cardiovascular silhouette normal. Lung fields clear and osteo structures satisfactorily mineralized and intact. Hila and mediastinumr normal.
  - c) A 9/27/08 radiology report finding no evidence of aneurysm and no evidence of aortic dissection. Pulmonary arteries are normal. No significant abnormality in the chest or abdomen demonstrated.
  - d) A summary completed on or about October 14, 2008 indicating left ventricular cavity size normal; normal left ventricular function; estimated left ventricular ejection fraction 60 to 65%; mild concentric left ventricular hypertrophy; mildly dilated left antrim; mild mitrial valve regurgitation; trace tricuspid regurgitation; mild pulmonary hypertension.

### **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).

### **ISSUE 1**

Prior to any substantive review, jurisdiction is paramount. In the instant case, the undersigned Administrative Law Judge issued a decision and order in this case on September 29, 2010. That decision and order found no jurisdiction on the grounds of 42 CFR Part 435 barring the state agency from addressing a substantive review where there has been a final disability determination by the SSA. As indicated in that decision,

the basis of the decision was that testimony on the record which included sworn testimony by both the AHR and claimant was that there was a pending SSI application with SSA. No exceptions were indicated. Pursuant to 42 CFR Part 435, there would be no jurisdiction.

Subsequent to the decision, the AHR on the case requested a review. The request seemed about whether the AHR wanted a rehearing or reconsideration as both terms were used. However, the language in the review request clearly falls under MAC R 400.919(3)—Reconsideration. The AHR's reconsideration specifically says that there was a misapplication of policy or law.

Both the AHR and claimant were under oath at the administrative hearing testifying that claimant had an SSI application pending with SSA. No exceptions were indicated. An SOLQ subsequently obtained did not show reapplication. Thus, the evidence indicates a prior denial.

Under the Michigan Administrative Procedures Act MAC R 400.917, BEM 600, as well as general evidentiary rules, the Administrative Law Judge is required to make a decision based on the evidence of record. The evidence of record in this case supports the September 29, 2010 Administrative Law Judge decision.

For these reasons, and the reasons stated above, the original hearing decision stands.

## **ISSUE 2**

In the alternative, the sequential analysis will be applied.

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, SHRT denied claimant in both of its decisions on the basis of Step 4—SHRT found that claimant could return to past relevant work. SHRT indicated past relevant work was a billing clerk. It is noted that claimant alleges that her past relevant work is working as a dental assistant which would involve much more time on her feet. Claimant indicated that her employer gave a special accommodation and allowed her to do clerical work instead. Claimant left her medical records section regarding past work blank. Thus, this Administrative Law Judge will find that claimant cannot return to past relevant work on the grounds that her past relevant work was working as a dental assistant and continue the analysis.

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 finds claimant can do other work based on 202.15 as guide. In reaching this conclusion, it is noted that claimant has already demonstrated that she is doing some other work. Doing work on a part-time or limited basis is not necessarily indicative of the inability to engage in SGA pursuant to 20 CFR 416.9729(a). Regarding claimant's statements at the administrative hearing, as already noted in the Findings of Fact, claimant's credibility was questionable. Claimant testified under oath.

As to the medical evidence taken as a whole, 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.

There is no evidence on the record that claimant's medical rises to statutory disability as it is defined under the law and thus, the department's denial is hereby upheld in the alternative.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the Order for Reconsideration finds no error pursuant to MAC R 400.919(3), Thus, the Administrative Law Judge's September 29, 2010 Decision and Order stands.

In the alternative, claimant is not eligible for statutory disability under the sequential analysis.

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

Date Signed: April 11, 2011

Date Mailed: April 11, 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: 