

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20113770

Issue No: 2009

[REDACTED] [REDACTED]
Hearing Date: March 3, 2011
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.8; MCL 400.9; and MCL 400.37; MCL 24.201-24.211; R 400 .901-400.922 MAC upon claimant's representative's request for a rehearing. After due notice, an in-person rehearing was held on March 23, 2011 in [REDACTED].

ISSUES

1. Did claimant's hearing representative [hereinafter AHR] establish jurisdiction?
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:

ISSUE 1/PROCEDURAL HISTORY

1. On July 29, 2008, claimant applied for MA-P with the Michigan Department of Human Services (DHS).
2. Claimant's AHR represents the hospital attempting to collect on medical bills from three hospitalizations.
3. Claimant did not apply for retro MA.
4. On October 31, 2008, the MRT denied.
5. On November 7, 2008, the DHS issued notice.

6. On January 23, 2009, claimant's AHR filed a hearing request.
7. On May 27, 2009, an administrative hearing was held.
8. MRT, and two SHRT review boards denied claimant eligibility.
9. On September 28, 2010, the undersigned Administrative Law Judge issued a decision denying claimant jurisdiction based upon claimant's personal testimony under oath pursuant to 42 CFR Part 435.
10. On October 27, 2010, claimant's AHR filed a document titled "Request for Rehearing/Reconsideration" claiming a misapplication of policy—criteria under a reconsideration. The supervisory authority of the cases assigned to DHS Administrative Law Judges is the authority which reviews any request for rehearing/reconsideration. Attached to the request by the AHR was a document purported to provide verification that a Social Security ruling on behalf of claimant found her ineligible due to a non-medical criteria. That ruling occurred on July 2, 2009—after the May 27, 2009 administrative hearing. The Social Security ruling had not taken place as of the administrative hearing and was misleading to the reviewing forum.
11. At the rehearing held on March 3, 2011, claimant's AHR did not understand the jurisdictional issues and was not appraised of 42 CFR Part 435 despite having received a decision identifying the applicable law and policy. The undersigned Administrative Law Judge gave the AHR the benefit of doubt despite the misleading verification attached to the request as the undersigned Administrative Law Judge was under an order for a rehearing. AHR was given an additional time to research jurisdiction and provide verification for a second time.
12. On March 21, 2011, the AHR submitted an SSI decision dated May 16, 2008 where claimant was denied on the grounds excess income. There was no evidence that this evidence was not available as of the administrative hearing; based on the date it clearly existed.

ISSUE 2

13. As of the date application, claimant was a 54-year-old female standing 5'5" tall and weighing 230 pounds. Exhibit 23. Claimant's BMI Index was 38.3 classifying claimant as obese. The morbidly obese index number is 40.0. Claimant has a high school education and some college.
14. Claimant does not have an alcohol/drug abuse problem or history
15. Claimant has a driver's license and can drive a motor vehicle.

16. As of the date of the initial administrative hearing on May 27, 2010, claimant was not working. Claimant's work history includes working as a cashier, retail clerk. Claimant testified that she did not work for many years as she worked as a housewife. As of the date of her rehearing, claimant was working.
17. Claimant alleges disability on the basis of kidney cancer, arthritis, high blood pressure.
18. The April 2, 2009 and subsequent September 9, 2009 SHRT decisions are adopted and incorporated by reference herein.
19. Medical evidence indicates that claimant's renal cancer has resolved within two months of her application. See Exhibits 56-58.
20. Other medical evidence at the time of the initial application and the initial hearing includes:
 - a) A 10/18/08 Medical Care Plus Impartial Evaluation Center assessment requested by MRT diagnosing claimant with the following impressions: hypertension, mildly uncontrolled; low back pain which is constant; history of renal cancer status post right nephrectomy and adrenalectomy, deemed cured from that; degenerative joint disease of left shoulder with diminished range of motion. Claimant underwent a right nephrectomy and adrenalectomy on June 23, 2008. Bone scan did not show any stress elsewhere. Exhibits 56-58.
 - b) MRT subsequently denied claimant after reviewing the 10/18/08 evaluation. Exhibits 59 and 60.
 - c) A DHS 49 completed on [REDACTED] indicating out of all the examination areas claimant was normal. The sit stand and walk options was left blank. The physician indicates that claimant has "no physical limitations." Exhibit 43 and 44.
 - d) A [REDACTED] evaluation on a DHS 49 indicating normal examination areas throughout the body; claimant can stand or walk for at least two hours out of an eight-hour workday and presumably sit about six hours in an eight-hour workday. Claimant can occasionally lift up to 50 pounds. Claimant does not have any other restrictions and no mental limitations. Exhibits 41 and 42.
 - e) Exhibit 23 completed on 4/2/08 indicates chronic narcotic use.

21. The record was held open in this matter to allow claimant's AHR to submit new and additional medical documentation. SHRT subsequently denied after review of that documentation. That documentation includes:

a) A DHS 49 completed in [REDACTED] indicating that claimant has no restrictions with regards to repetitive actions of the hands/arms. Claimant has no restrictions with regards to the feet/legs and operating controls. Claimant can occasionally lift up to 50 pounds. Claimant's condition is stable.

b) A March 2009 assessment indicates: anemia, resected stage 1 right RCC with right radical nephrectomy on 6/23/08, NED. Hypertension; osteodegenerative disease; anxiety/depressive disorder.

c) A September 8, 2008 assessment indicating that claimant became anemic over three months following her surgery. The assessment indicates that two months post nephrectomy, peripheral blood picture has returned to normal.

d) A DHS 49 completed [REDACTED] indicating that claimant can stand and/or walk about five hours in an eight-hour workday. Claimant can lift up to 24 pounds. Her condition was improving, and has no restrictions with regards to repetitive actions in the hands/arms or foot/legs.

e) A 9/19/08 radiology report indicates no evidence of osseous metastatic disease.

f) A DHS 49 completed in [REDACTED] indicating that claimant can stand and/or walk about six hours in an eight-hour workday, has no restrictions as to repetitive actions, and no mental limitations. Claimant's condition is stable. The report finds claimant completely normal in all physical areas of evaluation. Claimant cannot lift any weight.

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).

Prior to any substantive review, jurisdiction is paramount. The relevant subject matter jurisdiction is found at 42 CFR Part 435. These regulations are quite specific with regards to the jurisdiction of the state agency when there has been a prior determination of disability. The state agency's jurisdiction is revoked when the SSA has made a final determination and none of certain exceptions identified in the statute are applicable. 42 CFR 435.540, 541.

The specific item therein cited by the initial hearing decision is found at 42 CFR 435.541(a)(b)(ii). This item states that if there has been a prior SSA determination 12 months or more after an SSA denial that such bars the state agency from jurisdiction unless there is an allegation of worsening or deteriorating conditions. The evidence in this case indicates that claimant testified under oath that she was alleging the same impairments and that she received a final determination by SSA. Thus, the undersigned Administrative Law Judge issued the September 28, 2010 decision on this authority.

Subsequent to that decision as noted in the Findings of Fact, the AHR alleged that the undersigned Administrative Law Judge misapplied law or policy. It is unclear what the AHR was claiming—the rehearing or reconsideration rule found at R 400 919 allows a reconsideration if there has been a misapplication of manual policy or law in the hearing decision. MAC 400.919(3)(a). The request for appeal cites “rehearing” and “reconsideration” and bits and pieces from the rule. In addition, the AHR attached verification which mislead the reviewing forum. Specifically, that document was issued after the administrative hearing herein. It was misleading.

At the rehearing, it was quite clear that the AHR again was not appraised of applicable law, policy, or authority herein. In light of the fact that this Administrative Law Judge's supervisory authority ordered a rehearing, the undersigned Administrative Law Judge gave the AHR an opportunity to look for evidence of jurisdiction. The regulations would allow jurisdiction if a prior SSA decision was issued for reasons other than disability. 42 CFR 435. On the other hand, a rehearing may be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision. The evidence presented was not newly discovered—it was in existence at the time of the hearing.

The AHR subsequently delivered evidence of an SSA determination in 2008 which was issued on the basis of excess income. Had this been presented, jurisdiction would have been proper. This Administrative Law Judge is required to make a ruling based solely upon the evidence of record at the administrative hearing. However, as a rehearing was ordered, this Administrative Law Judge will find jurisdiction and proceed.

ISSUE 2

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).

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addition and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. Thus, obesity in-and-of itself is not sufficient to show statutory disability.

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). It is noted that the subsequent SHRT decision of 6/09/09 denied claimant at the basis of Step 2. SHRT indicated that claimant's alleged impairment(s) did not meet duration at 20 CFR 416.909. Evidence on the record indicates that claimant's renal cancer was resolved and thus, there is no evidence that the renal cancer meets duration. That leaves claimant's arthritis and high blood pressure. Other diagnoses in the medical packet include anemia, hypertension, osteodegenerative disease, and anxiety/depressive disorder. While there is some question as to how many new impairments an individual can add or allege after the initial application, this Administrative Law Judge will rule any ambiguities in claimant's favor on the grounds that this second step is a *de minimus* step and continue the analysis.

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 finds claimant does not meet statutory disability on the basis of Medical-Vocational Grid Rule 202.13 as a guide.

In reaching this conclusion, it is noted that the bulk of claimant's medical evidence does not indicate that claimant has weight restrictions which would prohibit her from performing work under 202.13. There is a recent document which indicates no lifting. That document is part of newly submitted medical evidence submitted after the initial hearing. As this does not relate to the time of the Administrative Law Judge's jurisdiction—at the time of the denial, this Administrative Law Judge notes that the DHS 49 does not contain any other abnormal findings. Thus, the lifting restriction is

incongruent with the great weight of the evidence identified on the form—the [REDACTED] DHS 49. Claimant has normal examination areas as to general, HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neural, and mental. Claimant has no restrictions with regards to repetitive actions as to hands/arms as well as foot/leg controls. Claimant has no mental limitations and her condition is stable. Moreover, claimant can stand and/or walk about six hours in an eight-hour workday. The sitting section was left blank.

With regard to claimant's renal issues, those were resolved within two months of claimant's surgery.

With regards to claimant's obesity, as already noted, obesity will not entitle an individual to statutory disability under the law. Congress removed obesity from the listings of impairments shortly after removing the drug and alcohol listings.

The RX note completed 5/26/09, Claimant Exhibit B which says claimant unable to work 4/08 – 4/09 is not corroborated by the great weight of the medical evidence and does not have any attached medical documentation. Moreover, it is inconsistent with the numerous 49s throughout claimant's file.

Evidence indicates as of the rehearing date that claimant has returned to work although on a part-time basis. It is further noted that under 20 CFR 416.972(a), substantial work activity is work that involves doing substantial physical activities. Work may be substantial even if it is done on a part-time basis or if an individual does less or gets paid less, or has less responsibility than the work done before. Claimant's closing argument seems to be an individual who is working part-time has eligibility for statutory disability without citing any authority.

Claimant is a very pleasant individual who has some issues. However, the renal issues are resolved. The anemia was resolved. The hypertension is highly connected to claimant's obesity and not shown to be a situation that stops claimant from engaging in work or work-like settings. Claimant's osteodegenerative disease as well as her anxiety and depression while of some issue to her lifestyle, does not indicate that there is not medical evidence to indicate that prohibits claimant from engaging in work and work-like settings.

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.

For these reasons, and for the reasons stated above, the department correctly denied claimant's application.

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: April 8, 2011

Date Mailed: April 8, 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

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