

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20117334  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: May 18, 2011  
Livingston 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 May 18, 2011. Claimant was represented by [REDACTED] [REDACTED] collecting on behalf of a hospital.

**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 July 28, 2010, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 2 months of retro MA.
3. On August 26, 2010, the MRT denied.
4. On August 28, 2010, the DHS issued notice.
5. On November 12, 2010, claimant filed a hearing request.
6. Claimant has an SSI application pending with the Social Security Administration (SSA).
7. On December 10, 2010, 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 4, 2011 SHRT once again denied claimant.

8. As of the date of application, claimant was a 52-year-old female standing 5'4 ½ "tall and weighing 240 pounds. Claimant has a 40.6 BMI classifying claimant as morbidly obese under the Body Mass Index. Claimant has a 12<sup>th</sup> grade education. Claimant has a CDL license.
9. Claimant 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. With regards to working, claimant was not working on the date of application. Claimant subsequently secured employment on December 20, 2010 and ceased working on May 2, 2011 as a cashier, stock person. Claimant worked 18 to 24 hours per week at \$7.40 per hour. Claimant was working four to five shifts and indicated that she separated because "of differences; he wanted me to quit." Claimant's work history is unskilled and medium, semi-skilled employment.
12. Claimant alleges disability on the basis of .
13. The December 10, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...Admitted 5/10 due to chest pain. Records indicate history of left carotid endarterectomy, four stents placed since 2006, total right knee replacement and carpal tunnel surgery...dobutamine stress echo was read as normal. Discharge diagnoses included atypical chest pain non-cardiac in origin, chest pain likely secondary to gastro intestinal origin and noncompliance with meds due to financial reasons.

...7/10 claimant complained of knee pain. X-rays of knee showed prosthesis was well aligned and well fixated. No arthritis of hip shown on x-ray. Incision well healed. Full range of motion of the knee. Collateral and cruciate ligaments fully intact. Complained of pain when hip was rotated internally. Ambulated with normal gait. No evidence of motor or sensory deficits of L4-S1. Straight leg raise negative...Denied per 20 CFR 416.920(e).

14. The subsequent August 4, 2011 SHRT decision is adopted and incorporated to the following extent:

History and physical: over reactive to injection, voiced improvement; treating source indicates no limitations.

15. An FIA-49 submitted by claimant's representative states in part:

I saw this patient one time. She is not disabled. Claimant Exhibit A.2.
16. A history and physical report completed October 27, 2010 states in part:

...Patient is not exactly sure what the anthroposophy accomplished. She states she did get a little bit better and then subsequently has continued to have pain. She tells me she is applying for disability presently. I am not exactly sure why and she is having some issues with that...Claimant Exhibit A.3.
17. An FIA-49 completed July 30, 2010 indicates claimant has no limitations, is obese, is diagnosed with coronary artery disease. Exhibit 6.
18. An FIA-49 completed July 26, 2010 indicates claimant does not need any assistive devices and has generally normal findings. The physician states in part:

We are at a loss for her pain in her right knee. All previous studies include bone scan, scans and lab tests are negative—we have not disabled her. We have referred her for second opinion. Exhibit 8.
19. A New York Heart Classification Study classifies claimant in a functional capacity of Class 1: Patients with Cardiac Disease But Without Resulting In Limitations Of Physical Activity. Ordinary physical activity does not cause undo fatigue, palpitations, dyspnea or anginal pain. Claimant's therapeutic classification is B: her ordinary physical activity need not be restricted. Exhibit 9.
20. Lab tests run on December 12, 2010 indicates claimant has high cholesterol.
21. Claimant testified at the administrative hearing that she does not need any assistance with her activities of daily living including preparing a sandwich, dusting, dishes, laundry and her bathroom and grooming needs. Claimant testified that she is very restricted with regard to sitting, standing and walking—testifying she cannot bend, stoop, sit for very long or stand for more than a half hour to an hour.

## 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.

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). 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 Administrative Law Judge concurs with the SHRT decision finding claimant not disabled pursuant to the fourth step of the analysis—20 CFR 416.920(f). Claimant is capable of returning to past relevant work.

In reaching this conclusion, it is noted that a number of claimant's professionals have found claimant's continued statements regarding her knee unexplained, without medical support, and questionable. In fact, one physician specifically wrote on the DHS-49: "I saw this patient one time. She is not disabled." The physician underlined the word not.

Other areas indicate that the physician is at a loss for claimant's continual complaints regarding her knee. As to these commentaries, claimant's credibility is questionable and/or there are potential malingering issues being raised. Moreover, claimant's testimony of her ability to engage in her activities of daily living without problems were not consistent with her specific discussion regarding her ability to sit, stand and walk. To this extent, claimant's complaints of pain are not supported by the evidence or the considerations required at 20 CFR 416.929. Also, claimant's complaints of gastro intestinal issues are being attributed to her cardiac problems.

As to the specific cardiac disease, the New York Heart Classification does not find that claimant is to be restricted in any significant manner with regards to her past relevant work.

For these reasons, and for the reasons stated above, statutory disability is not shown.

As to claimant's cholesterol and obesity, these are not considered statutorily disabling under the law. This Administrative Law Judge finds that claimant's complaints about bending and stooping to be consistent with a morbidly obese individual but not to rise to a disease state as anticipated by statutory federal disability.

**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.

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/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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JGS/db

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