

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011923

Issue No: 2009

[REDACTED]

[REDACTED]

Hearing Date: December 8, 2010

Kalamazoo 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 December 8, 2010. Claimant was represented by [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 December 14, 2009, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On June 9, 2010, the MRT denied.
4. On June 14, 2010, the DHS issued notice.
5. On September 10, 2010, claimant filed a hearing request.
6. On June 22, 2010, claimant received a denial from the SSA with regards to an appeal of a denial by SSA on her SSI application. The denial was outside of the 12 months rule and thus, jurisdiction is proper.
7. On October 22, 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 8, 2011 SHRT once again denied claimant.

8. As of the date of application, claimant was a 46-year-old female standing 5'4" tall and weighing 140 pounds. Claimant has "some college." Claimant also has an "accounting certificate—one year program."
9. Claimant does not have any self reported alcohol/drug abuse problems or history. A May 25, 2010 psychological evaluation indicates a request to assess substance abuse history. The psychologist indicates numerous ER visits for pain medication. 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 2005 where she had been working for the [REDACTED] as an [REDACTED] [REDACTED] r. Claimant worked the position for 20 years full time. Claimant had a [REDACTED] settlement of [REDACTED]
12. Claimant alleges disability on the basis of rheumatoid arthritis, fibromyalgia, and chronic pain.
13. The October 22, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

5/10 generally neat and clean. Using a walker with seat. Difficulties with simple mental status questions, though effort may have been minimal in this area, particularly given her educational background. Answered questions appropriately and speech was clear and understandable. No evidence of overconfusion. Not psychotic. Affect was composed and appropriate for her thought content. Diagnoses included depressive disorder and rule out cognitive disorder due to the side effect of medication.
14. In September 2009 claimant was discharged from hospital after at total abdominal hysterectomy. She had menorrhgian poly menorrhgian anemia. Treated with transfusion of two units of packed cells prior to surgery. Noted to have recent hospitalizations for pancreatitis.
15. In November 2009 claimant was noted to normally to go to the ER three times a month. She wanted to try [REDACTED]. Rated pain as eight out of ten. Had tenderness on deep palpitation of abdomen. Lower extremities intact. Diagnoses included acute pancreatitis, anemia with hematocrit of 31, status post hysterectomy and recurrent pancreatitis.

16. The subsequent August 8, 2011 SHRT decision is adopted and incorporated to the following extent:

Admitted 9/10 due to chest pain. Prior cardiac cathe showed normal coronaries. Negative workup and cardiologist determined chest pain was not cardiac.

Denied per Medical Vocational Grid Rule 202.21 as a guide.

17. Claimant admitted 11/10 with presyncope. Did not demonstrate orthostatic positive blood pressures in the ER. Acute kidney injury but after hydration, kidney functions returned to normal. Had chronic pain without real change from her baseline. Physical exam on admission showed strength, sensation, and cranial nerves grossly normal.
18. Claimant testified at the administrative hearing that she is virtually unable to do few if any of her activities of daily living including housework, preparing a sandwich, etc. On questioning, claimant said that she does not need any assistance with her bathroom and grooming needs.
19. A psychological evaluation completed 5/25/10 states in part:

...From what I can gather, she has seen various doctors. The optimal circumstance is to have one medical provider monitor her pain medication. Additionally, during this evaluation, there was a change between narrative, describing her problems, which she did fluently and without recall difficulties (as well as completing an intake form) and her responses to mental status questions...

20. Many of claimant's radiology reports show normal testing.

### **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).

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 conclusion that claimant does not meet statutory disability on the basis of Medical Vocational Grid Rule 202.21 as a guide.

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.

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).

It is noted that claimant's credibility was questioned and documented on the psychological evaluation conducted on May 17, 2010. This Administrative Law Judge also notes that claimant described and testified her limitations as significant and severe and virtually rendering her incapable of doing much of anything while at the same time saying she did not need any assistance whatsoever with any bathroom and grooming needs.

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 416.928 and .913.

For these reasons, and for 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/

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

Date Signed: October 11, 2011

Date Mailed: October 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.

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JGS/db

cc:

