

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-2369
Issue No: 2009

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 [REDACTED]. The claimant was represented by [REDACTED]. The claimant appeared and provided testimony along with [REDACTED] his wife. The department witnesses were Irma [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) and retroactive Medical Assistance (retro 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 [REDACTED] applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did apply for retro MA.
3. On [REDACTED], the MRT denied.
4. On [REDACTED] the DHS issued notice.
5. On [REDACTED], claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has an SSI application pending with the Social Security Administration (SSA).

7. On [REDACTED], 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 [REDACTED] SHRT once again denied claimant.
8. As of the date of hearing, claimant was a [REDACTED] standing 5'11" tall and weighing approximately 200 pounds. Claimant has a high school education.
9. Claimant testified that he smokes approximately 1 to 1 ½ packs of cigarettes per day. He does not drink alcohol or use any illicit or illegal drugs.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant is not currently working. Claimant last worked in [REDACTED] driving a [REDACTED]. Prior to that, the claimant also worked in home remodeling as a laborer and delivering washers and dryers.
12. Claimant alleges disability on the basis of anxiety, depression, suicidal ideation, asthma and hypertension.
13. On [REDACTED] the claimant presented to the hospital for left sided chest pain. A chest x-ray showed no acute pathology. An EKG showed no acute ischemic changes. Physical examination was normal. A cardiologist stress test found no definite perfusion evidence of myocardial ischemia while reaching target heart rate of 77% of age predicted heart rate. The left ventricular ejection fraction was preserved at 69%.
14. A [REDACTED] assessment indicates the claimant presented for services for depression and anxiety. The claimant was cooperative, anxious, tearful and depressed. The claimant's affect was primarily appropriate. His speech was normal for age and intellect. The claimant's thought content and perceptions were unremarkable. His behavior and motor activity were normal and alert. The claimant was oriented to time, place and person. His insight was fair to good and his memory was impaired in the long term. His reality orientation was intact. The claimant was diagnosed with depressive disorder-NOS and rule out major depressive disorder-single episode, moderate. Also, rule out panic disorder without agoraphobia. The claimant was assigned a current Global Assessment of Functioning (GAF) of 40.
15. On [REDACTED] the claimant was seen at the family care with complaints of anxiety and panic attacks. The claimant reported feeling helpless,

hopeless and he was tearful. He reported that he had suicidal thoughts in the past, but none t present. He denied any plan. The claimant was diagnosed with depression and Dysthymia. The claimant was given a prescription for Paxil and Ativan.

16. On [REDACTED], the claimant had another appointment with [REDACTED]. He rode his bike 6 miles to the appointment and appeared less anxious to the practitioner. The claimant reported that he still had some anxiety and still worried about his children.
17. On [REDACTED], an independent psychological evaluation was completed. The claimant noted that he had used Paxil as a prescribed medication in the past, but that he had been out of that medication for awhile. He also reported that he had attended counseling sessions on a regular basis, which had helped him with getting his medications stabilized. The claimant seemed in contact with reality and appeared oriented to time, place and person. He appeared to have issues with self esteem and he did not appear to be hyperactive, or retarded. He seemed to have a fair degree of autonomy. He did not appear to exaggerate nor minimize his symptoms. There did not seem to be a fair amount of insight into his issues. There did not appear to be any evidence of loose associations or derailment in his overall thought processes. Thought processes appeared fairly linear and sequential. His conversation seemed poorly organized with little goal direction. Short term memory seemed affected by stress and anxiety. Long term memory seemed appropriate. The claimant denied hallucinations or delusions. There did seem to be a sense of the claimant feeling persecuted. He admitted he felt scared to be controlled by others. He admitted to suicidal ideation and admitted to a few past attempts; the last being about 5 years ago. He admitted to issues with sleep and there appeared to be an overall sense of him feeling worthless. He admitted to feeling down and depressed. He felt anger and resentment towards his ex wife. He admitted to feelings of panic. He noted tightness in his chest and feelings of doom. He made fair eye contact with a flat affect. He had no problems with simple addition, division or multiplication. The claimant was diagnosed with a generalized anxiety disorder and mood disorder-NOS. The claimant was assigned a GAF of 55. The prognosis for the claimant was fair. He appeared to have emotional issues that would benefit from therapeutic intervention. He would also appear to benefit from a vocational training program.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8. In reviewing all of the evidence presented, it is found that the claimant would be limited to performing tasks of a simple and repetitive nature, although it is not found that the claimant is limited to any particular exertional level due to any physical limitations. Although the claimant presented to the hospital two times for chest pain on both occasions, the chest pain was found to be anxiety related and not physical in nature. The evidence shows that the claimant's limitations are mental in nature. The evidence does not support significant limitations associated with any physical impairments. Therefore, the claimant is found to be capable of simple and repetitive work at any exertional level.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant

work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant can return to past relevant work on the basis of the medical evidence. The claimant's past relevant work included working as a laborer performing clean up and delivering washers and dryers and also as an assembler. Each of these positions involves simple and unskilled work that the claimant would be found capable of. Therefore, the claimant is denied at step 4 of the analysis as he would remain capable of performing these types of work.

Claimant has submitted insufficient objective medical evidence that he lacked the residual functional capacity to perform simple and unskilled work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform his prior work. Claimant is disqualified from receiving disability at Step 4 based upon the fact that he has not established by objective medical evidence that he could not perform simple and unskilled work.

The 6th 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 (6th 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.

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/ _____
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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.

SLM/jk

cc: _____
MAHS