

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-33366

Issue No: 2009; 4031

[REDACTED]

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, a telephone hearing was held.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) and State Disability Assistance (SDA) 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], claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On [REDACTED] and subsequently on [REDACTED] the MRT denied.
4. On [REDACTED], the DHS issued notice.
5. On [REDACTED], claimant filed a hearing request.
6. 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, [REDACTED], [REDACTED] SHRT once again denied claimant.

7. Claimant has been denied SSI, but has appealed the decision pursuant to an SOLQ ran on [REDACTED] indicating claimant is at the "H" stage. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a [REDACTED] standing 5'7" tall and weighing 200 pounds. Claimant's body mass index (BMI) is 31.3 classifying claimant as obese under the BMI.
9. Claimant does not currently have an alcohol abuse problem. Claimant testified that he had an alcohol abuse history, but currently [REDACTED] Claimant uses marijuana. Claimant has a significant cocaine and marijuana abuse history which is not material herein. Claimant smokes and has a nicotine addiction.
10. Claimant does not have a driver's license due to DUI's.
11. Claimant has a GED.
12. Claimant is not currently working. Claimant was recently released from incarceration where he worked in the kitchen for five days per week, 6 to 8 hours per day. Claimant's work history is light exertional, skilled; medium exertion, semi-skilled. Claimant has worked as a foreman in manufacturing for 7 years.
13. Claimant alleges disability on the basis of secondary to closed head injury, depression, bipolar and anxiety.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

A psychological evaluation dated [REDACTED] showed the claimant had recurrent major depression, cocaine dependence in remission, cannabis abuse and cognitive disorder NOS (Pg. 21). A physical examination dated [REDACTED] showed the claimant had some distal sensory loss in the hypothenar aspect of his left hand. However, power and pincher grasp were well preserved as well as grip strength. He had Hepatitis C, but his examination was basically unremarkable (Pgs. 26-29).

A psychiatric evaluation dated [REDACTED] showed the claimant had recently been released from prison. The claimant has a history of substance abuse, but reported that he had been clean since [REDACTED]. His mood was anxious, but directable. His affect was appropriate.

He denied hallucinations and did not appear to be responding to any stimuli. He denied suicidal and homicidal ideations. He reported mood swings as well as racing thoughts. His speech was clear, coherent and goal directed. He had difficulty doing serial 7's and simple calculations. Diagnosis was bipolar disorder (records from DDS).

15. The subsequent [REDACTED] SHRT decision is adopted and incorporated by reference herein/to the following extent:

Newly presented: Family Outreach Center [REDACTED] [REDACTED] Page 13, evaluation: diagnosed – bipolar; recently released from prison after one year [REDACTED]; stable on medications; assessment page 41. Family Outreach Center, [REDACTED], page 4, medication review: stable.

Analysis: The medical evidence of record does not indicate the presence of limitations associated with physical impairments. The claimant is noted for long-term history of depression and polysubstance abuse. The claimant was incarcerated and states that he has remained abstinent of substance abuse since paroled. While drug and alcohol abuse is present, the medical evidence does not support that it is material to this determination. The claimant, while maintaining their abstinence, retains the ability to perform simple and repetitive tasks. Denied per 204.00 as a guide.

16. Claimant needs extensive dental work.
17. A State of Michigan DDS evaluation done in [REDACTED] concludes that claimant has:

“...the basic intellectual skills to manage employment. As long as he can remain substance free and his mood becomes manageable, it seems likely he could resume working at some point over the next six months.” Exhibit 21.

18. A [REDACTED] neurological and orthopedic report finds claimant capable of engaging in many current abilities including sitting, standing, bending, stooping, etc. Claimant can lift up to 30 pounds with his left hand. Claimant reports no problems lifting with his right hand. The test results regarding reflexes are all checked off as normal, including ambulation.

Claimant has a 5/5 grip strength. Claimant does not need any support or walking aid.

19. A DDS evaluation completed on [REDACTED] concludes that with regards to alleged nerve damage in the left hand, claimant is able to do manipulative tasks and no treatment is indicated. As to claimant's Hepatitis C, there were no findings of cirrhotic disease. Exhibit 29.
20. Claimant submitted many Family Outreach Center progress notes as new medical evidence indicating claimant had gained some significant weight and had his medication assessed. Claimant has some stressors with homelessness at times, but generally denies auditory or visual hallucinations, as well as suicidal ideation. Claimant has never been admitted into a psychiatric hospital. Claimant's diagnosis is bipolar disorder. Claimant's affect is appropriate and mood is melancholy. Thought processes logical and thought content unremarkable. Claimant has some problems with sleeping. Appearance is appropriate. Psychomotor behaviors were unremarkable.
21. Claimant reported and testified at the administrative hearing that he is able to engage in activities of daily living, including meal preparation, dusting, washing dishes and doing laundry. Claimant does not need any assistance with his bathroom or grooming needs.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days.

Substance abuse alone is not defined as a basis for eligibility.

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. With regards to claimant's alleged physical impairments, claimant had some work up with his left arm and hand. However, the assessment, as indicated in the findings of facts, concludes that while claimant may be limited to lifting 30 pounds with the left arm, this does not interfere with his ability to work and/or engage in fine manipulation. Thus, this issue does not meet severity and the analysis will continue with regards to the alleged mental impairment(s) only. 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 have statutory disability on the basis of Vocational Grid Footnote 204.00 as a guide with regards to claimant's alleged mental/emotional issues. As already noted, claimant's issues regarding his hand are not severe. The analysis at stage 5 is with regards to claimant's alleged mental impairment(s).

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).

Claimant has the burden of proof from Step 1 to Step 4. 20CFR 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.

It is noted that claimant does have some depression/bipolar issues. However, statutory disability does not require an individual to be symptom free in order to make a finding of not disabled.

Claimant is essentially independent with his activities of daily living. Thus, while claimant has some mental impairment issues, these do not rise to statutory disability under 204.00 to a level at which statutory disability would be triggered - claimant's issues do not interfere with his ability to engage in work or work like settings. It is further noted that while claimant was incarcerated. He was able to work 6 to 8 hours a day, 5 days a week in the kitchen.

There is no evidence that the historical closed head injury has resulted in any disabling medical condition.

With regards to the other medical evidence as to claimant's mental state, claimant's affect has been noted repeatedly to be appropriate and goal directed.

A DDS evaluation done in [REDACTED] concludes that claimant has the basic intellectual skills to manage employment.

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/

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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/jk

cc:

[REDACTED]

MAHS