

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-41953

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 applied for 3 months of retro MA.
3. On [REDACTED] the MRT denied.
4. On [REDACTED], the DHS issued notice.
5. On [REDACTED] 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, on [REDACTED] SHRT once again denied claimant.

7. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. As of the date of application, claimant was a [REDACTED] standing 6'1" tall and weighing 173 pounds. Claimant's normal weight is 190 pounds. Claimant's body mass index (BMI) is 22.8 classifying claimant as normal under the BMI.
9. Claimant does not have an alcohol/drug abuse problem or history. Contrary evidence indicates claimant claims to use "medical marijuana." As of the date of application, claimant smokes. Claimant has a nicotine addiction. Claimant testified at the administrative hearing that he recently quit.
10. Claimant does not have a driver's license due to being suspended for failing to pay fines/driver responsibility.
11. Claimant has a high school education.
12. Claimant is not currently working. Claimant last worked in [REDACTED].
13. Claimant alleges disability on the basis of chest pain, back pain, knee pain and anxiety.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical summary: Admitted in [REDACTED] due to depression. He had been admitted in [REDACTED] for suicidal thoughts and he stopped taking some of his medications. He reported daily use of medical marijuana due to chronic pain. History of substance abuse. Cooperative, talkative and somewhat irritable. He had good eye contact and some pressured speech. His mood and affect were depressed. There were no perceptual disturbances and thoughts were cohesive. Diagnosis was bipolar-depressed. His physical examination revealed normal range of motion, strength and tone. Gait was normal. Deep tendon reflexes were normal. Sensory functions were normal.

In [REDACTED] the claimant was seen for right wrist pain. On examination, the wrist actually appeared quite normal. Pain was out of proportion

to the examination. X-rays of the wrist were negative.

A stress echocardiogram dated [REDACTED] showed his estimated ejection fraction was 55%. It was a non-diagnostic stress echo because of his inability to reach target heart rate. He stopped due to shortness of breath, dizziness and increased chest pain. There were no significant ST segment changes with exercise. 5.5 METS was achieved.

In [REDACTED] the claimant was riding a moped and was run off the road into a ditch. He reported rib pain and knee pain. Lungs were clear. He had tenderness and abrasions and bruising noted to the right lower rib border. He had normal range of motion of the left knee with a click noted with extension. His mood and affect were appropriate. Denied per 203.28 as a guide.

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

...Newly submitted evidence: An x-ray of the left ankle on [REDACTED] showed an old non-united fracture of the medial malleolus and old united fracture of the mid fibula. The physical examination reported full active range of motion of all extremities without tenderness. There was intact range of motion of the left ankle with no focal deficits. An ultrasound of the neck on [REDACTED] [REDACTED] showed thyromegaly with heterogeneous.

The mental status on [REDACTED] noted he was alert and fully oriented. His affect was normal. Judgment and mood was normal.

The claimant's x-ray of his left ankle showed an old non-united fracture. However, he had intact range of motion of the left ankle with no focal deficits. The ultrasound of the neck showed thyromegaly with heterogeneous. The medical evidence shows that he may be depressed and anxious at times. He is still able to remember, understand and communicate with others.

As a result of the claimant's combination of severe physical condition, he is restricted to performing medium unskilled work. He retains the capacity to lift up to 50 pounds occasionally, 25 pounds frequently and stand and walk for up to 6 to 8 hours. Denied per Medical Vocational Grid Rule 203.28 as a guide.

16. Many of claimant's exhibits in his file indicate that he has many non-medical/mental personal issues with regards to income and employment. Claimant testified at the administrative hearing that he is independent with his activities of daily living. Claimant can prepare a meal, dust, wash dishes, do laundry, etc. Claimant does not need any assistance with his bathroom and 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).

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). Claimant's work history was not fully articulated and remains unclear. Thus, this ALJ will rule the ambiguities in claimant's favor despite evidence indicating claimant is capable of engaging in standing and walking for 6 to 8 hours a day and frequently lifting 25 pounds. 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 SHRT in finding claimant not disabled pursuant to Medical Vocational Grid Rule 203.28 as a guide.

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's alleged mental impairment does meet severity. However, at the same time, claimant testified that he is basically independent with his activities of daily living. It appeared that claimant's mental impairment(s) interferes with claimant's ability to engage in daily activities which would be a reflection of the type of medical situation which the federal and state law recognizes as statutorily disabling for an alleged mental problem.

It is also noted that the medical evidence taken as a whole, reflects that claimant can lift up to 50 pounds occasionally, 25 pounds frequently and stand/walk for up to 6 of 8 hours. Claimant is essentially independent with his activities of daily living.

Clearly, claimant has some social issues which he is grappling with which are quite significant and severe as they would be for any individual similarly situated. However, the law does not recognized social barriers as statutorily disabling. The department's actions must be upheld.

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]

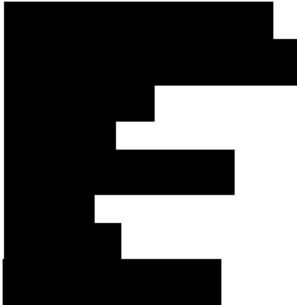
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

2012-41953/JGS

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:



MAHS