

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-42044

Issue No: 2009

[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, an in-person hearing was held at the [REDACTED]. Claimant was represented at the administrative hearing by [REDACTED].

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 [REDACTED], claimant re-applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 1 month of retro MA
3. On [REDACTED], the MRT denied.
4. On [REDACTED], the DHS issued notice.
5. On [REDACTED] claimant filed a hearing request.
6. On [REDACTED] 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] [REDACTED] SHRT once again denied claimant.

7. Claimant has been denied SSI by the Social Security Administration (SSA) due to an unfavorable hearing decision by a Federal Administrative Law Judge (ALJ) issued [REDACTED]. Claimant has received a final determination.
8. As of the date of application, claimant was a [REDACTED] standing 5'3" tall and weighing 200 pounds. Claimant's body mass index (BMI) is 35.4 classifying claimant as obese under the BMI.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a driver's license.
11. Claimant has one year of college.
12. Claimant is not currently working. Claimant is currently on a leave of absence from her [REDACTED] position. Claimant testified that she went on the leave of absence in [REDACTED]. Claimant's work history is semi-skilled.
13. Claimant alleges disability on the basis of porphyria, fibromyalgia, speech impediment from a disease, coronary artery disease, macular degeneration, kidney stones and mitral valve prolapse.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
15. The [REDACTED] subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

...Newly submitted evidence: emergency room visit on [REDACTED] for flank pain. A CAT scan of the abdomen showed partial obstruction. She underwent a cystoscopy, ureteroscopy and stone extraction. She was discharged in stable condition (Exhibits B1-2)...She underwent a nerve block in the emergency department on [REDACTED] for chronic back pain. (Exhibits A1-2). Denied per 201.21 as a guide.
16. Claimant had a previous application of [REDACTED] which was denied by DHS. Claimant requested a hearing and went before Judge Landis Lain on [REDACTED]. On [REDACTED] Judge Lain issued a Decision and Order upholding the department's denial. Register [REDACTED]. That thorough and extensive decision is adopted and incorporated by reference herein.

17. Newly submitted evidence after Judge Lain's decision includes:
 - a. A [REDACTED] letter from [REDACTED] indicating that claimant's best distance corrected vision is 20/20 in each eye with a myopic and astigmatic lens correction. Claimant was advised to use artificial tears frequently, wear eye glasses full time and take multi-vitamins.
 - b. A radiology report of [REDACTED] for an MR Cervical Spine with and without contrast for neck pain concluded degenerative disc changes, but no significant ridging, disc herniation or stenosis is present.
 - c. A [REDACTED] MRI of the brain with and without gadolinium concludes unremarkable appearing MRI images.
18. Claimant testified that she is in daily excruciating pain that is about an "8 out of 10." Claimant testified that she has memory issues. Claimant also complained of PTSD from a car accident in [REDACTED]. Claimant generally complained of chronic pain issues.

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.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, federal regulations are quite specific with regards to when a state agency has jurisdiction. There is no jurisdiction where there has been a final determination on an SSI application by SSA under the conditions identified in the federal law. 42 CFR 435.541.

In this case, evidence indicates that claimant went before a Federal ALJ and received an adverse decision. That decision pursuant to verification from Social Security was rendered in July, 2012. As claimant's appeal time period has not expired, this ALJ will rule the ambiguities in claimant's favor and continue the analysis.

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.

As noted in the findings of facts, Judge Lain issued a decision and order upholding the department of claimant's disability application of [REDACTED]. [REDACTED]. That decision, pursuant to the findings of facts herein, has been adopted and incorporated by reference herein. That decision addresses many of the evidentiary exhibits contained in claimant's file. That decision is very thorough and specific analysis of the medical evidence. The undersigned ALJ adopts the findings and conclusions of that decision.

With regards to newly submitted evidence, there were a number of radiology reports as identified in the findings of facts which are essentially non-remarkable. None of these show that claimant has any significant processes which would rise to statutory disability as it is defined under federal and state law. Nor does claimant's vision assessment reach statutory disability in that there is no evidence to indicate that claimant is unable to engage in work and work like settings due to any vision impairment(s). It is also noted that degenerative changes identified in the radiology report are generally considered normal aging. Absent of showing that they interfere with an individual's ability to engage in work or work like settings, normal aging does not rise to statutory disability as it is not recognized as statutorily disabling under the law. The medical vocational grids take into account the role of age, and other biographical data in assessing the medical evidence.

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 finding that claimant does not meet statutory disability on the basis of 201.21 as a guide.

In reaching this conclusion, it has already been noted that claimant's numerous radiology reports submitted after Judge Lain's decision are essentially non-remarkable.

It is also noted that claimant's degenerative issues in the radiology reports are not shown to be independent or statutorily disabling by themselves.

It is also noted that claimant does not have evidence that her vision issues interfere with her ability to engage in work or work like settings. In fact, claimants "...best distance corrective vision was 20/20 in each eye..."

Taken into account all the medical evidence including the evidence used in Judge Lain's decision along with the newly submitted evidence herein, this ALJ does not find statutory disability or any difference as considerations might arise under the considerations and issues of 20 CFR 416.922 and .923.

It also noted that claimant had very significant complaints about chronic pain and issues. However, under the considerations and issues of 20 CFR 416.927, the great bulk of the objective medical evidence is not consistent with claimant's complaints and testimony. 20 CFR 416.913 requires very specific findings and corroboration pursuant to 20 CFR 416.929. Claimant's complaints were not corroborated by the great bulk of medical evidence.

Regarding claimant Exhibits A&B, the use of a steroid for pain control and the other medical issues with regards to a stone extraction are not severe and do not rise to statutory disability.

It is further noted that there is no mental impairment assessment which would indicate severity rising to statutory disability.

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]

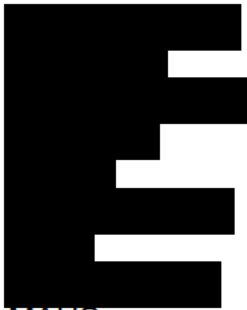
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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

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