

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-56168

Issue No: 2009; 4031

[REDACTED] 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, 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 re-applied for MA and SDA with the Michigan Department of Human Services (DHS). Claimant's evidentiary packet indicates that claimant had a prior application of [REDACTED] denied by MRT on [REDACTED]
2. Claimant did not 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. On [REDACTED] the State Hearing Review Team (SHRT) denied claimant.

7. Pursuant to an SOLQ verification, claimant applied for SSI with the Social Security Administration (SSA) on [REDACTED] and was denied. The undersigned ALJ has no evidence of a timely appeal.
8. As of the date of application, claimant was [REDACTED] standing 5'7" tall and weighing 119 pounds.
9. Medical evidence indicates that claimant has an Axis I diagnosis of alcohol dependence "in recent remission, mood disorder associated with alcoholism," per evaluation completed on [REDACTED]. Claimant testified that he does not smoke.
10. Claimant testified at the administrative hearing that he does not have a driver's license due to [REDACTED]
11. Claimant has [REDACTED] of education.
12. Claimant is not currently working. Claimant was incarcerated for [REDACTED] and has a history of semi-skilled work. Claimant's lists his work history as unskilled, working as a waiter and cook.
13. Claimant alleges disability on the basis of torn rotator cuff. Medical evidence also includes mental health treatment. Claimant has a history of bulimia and digestive issues. Claimant testified at the administrative hearing that since his application with DHS, he suffered a closed head injury. No medicals exist in claimant's file on the injury claimant indicates he suffered in [REDACTED]. Claimant makes a self report on his most recent mental status evaluation with DDS regarding a self reported "severe brain accident." This injury is not considered herein. Claimant testified he has re-applied regarding the new newly alleged medical problems.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

An MRI on the right shoulder on [REDACTED] shows mild degenerative changes in the AC and glenohumeral joints. There is some rotator cuff tendinitis and probable biceps tendon SLAP tear. The physical examination reports no AC joint tenderness. He had positive impingement sign (Pg. 8). The mental status on [REDACTED] noted speech was spontaneous. His mood was described as depressed and anxious. He was fully oriented. The claimant is dependent to alcohol (DDS medical records).

Analysis:

The MRI showed mild degenerative changes. There was some rotator cuff tendinitis. The examination reported no AC joint tenderness with positive impingement sign. The medical evidence shows that the claimant may be depressed and anxious at times. He is still able to remember, understand and communicate with other.

As a result of the claimant's combination of a severe physical condition, he is restricted to performing light unskilled work. He retains the capacity to lift up to 20 pounds occasionally, 10 pounds frequently and stand and walk for up to 6 of 8 hours.

Recommended Decision:

Therefore, based on the claimant's vocational profile (younger individual, 14 years of education and light work history); MA-P is denied using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the information in the file is inadequate to ascertain whether the claimant is or would be disabled for 90 days. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light unskilled work.

15. Claimant testified that he engages in all activities of daily living [REDACTED]
16. Claimant did not allege a mental impairment at application.
17. Medical evidence indicates that claimant needs shoulder surgery due to a torn rotator cuff. Claimant continues to experience pain due to the rotator cuff injury.

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.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, federal law does not allow the state agency to go forward on a substantive review where there has been a final SSI determination by the SSA. 42 CFR 435.541.

Evidence on the record indicates that claimant received a final determination from SSA. That determination would be binding on the state agency. While claimant's additional medical is not taken into account pursuant to federal and state evidentiary issues, this ALJ will rule the ambiguities in claimant's favor and apply the sequential analysis.

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 due to his shoulder injury. 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 decision in finding claimant not disabled pursuant to the considerations and issues at Medical Vocational Grid Rule 202.20 as a guide.

In reaching this conclusion, as noted in the findings of facts, claimant's self report regarding a head injury is not considered as that injury occurred after claimant's application herein. Claimant did not bring in any new medicals to the administrative hearing for consideration. Claimant indicated that he has re-applied and is currently gathering information for that new application with regards to the head injury.

With regards to claimant's existing medical file, this ALJ adapts the SHRT analysis. Claimant clearly needs surgery for a rotator cuff tendinitis issue corroborated by an MRI showing a positive impingement sign. However, statutory disability does not recognize the need for surgery of this nature as statutorily disabling. Under the law, claimant is classified as a younger individual as he falls within the 18 to 44 year old range. Claimant's residual functional capacity as analyzed under the Medical Vocational Grids requires a finding of not disabled pursuant to 202.20 as a guide. The conclusion is consistent with SHRT's analysis in its assessment as to claimant's ability and capacity to lift, stand and walk.

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 also noted that claimant's mental health issues do not meet statutory disability as defined under the law and consistent with the requirements found in 20 CFR 416.927 and .928. Even taking into consideration 20 CFR 416.922, this ALJ does not find that claimant's medical evidence rises to statutory disability. It is further noted that the drug and alcohol regulation would find claimant not disabled where there is any material finding of disability pursuant to the considerations found at 20 CFR 416.214 and .935 at all.

Claimant understands that there may be different considerations with his reapplication based upon new impairments. However, as claimant's current medical file stands, statutory disability is not supported by the great bulk of the medical evidence per 20 CFR 416.928. The department's denial 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.

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