

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-57326

Issue No: 2009; 4031

[REDACTED]

[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 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] claimant filed a hearing request.
6. On [REDACTED], the State Hearing Review Team (SHRT) denied claimant.
7. Claimant has been denied an SSI application with the Social Security Administration (SSA). Verification indicates the denial was received on [REDACTED]. The department indicated that it was their understanding

that claimant's case was being remanded after an unfavorable decision by the appeals counsel back to the ALJ. To date, claimant has not submitted verification of the Social Security case pending.

8. As of the date of application, claimant was a [REDACTED] standing 5'2" tall and weighing 182 pounds. Claimant's body mass index (BMI) classifies claimant as obese.
9. Claimant testified at the administrative that she does not have an alcohol/smoking problem or history. Claimant's medical file consisting of over [REDACTED] of evidence is replete with indications that claimant has been advised by medical personnel to cease smoking and has been continuously counseled on the necessity for her to quit smoking. Claimant stated that as of the administrative hearing, she had quit smoking. Medical evidence indicates that claimant was smoking as of the date of evaluation one pack a day [REDACTED]. Claimant's medical file is replete with warnings to claimant regarding the acquisition of pain medication and complaints that she lost her medication or that the dog ate the medication and that claimant needed replacement(s). Claimant was also warned that she violated a contract with the pain medication physician by obtaining other pain medications from another doctor. Claimant has been referred to a pain clinic as the sole dispenser for certain pain medications upon repeated requests from her doctor. See for example Exhibits 396 & 666.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has a 10th grade education.
12. Claimant is not currently working. Claimant last worked in [REDACTED] as a waitress. Claimant has also worked as an assistant manager in telemarketing, bar tender, office manager and CNA. Claimant's work history is unskilled/skilled.
13. Claimant alleges disability on the basis of Hepatitis C, liver disease, chronic spondylosis, carpal tunnel syndrome, nerve damage and psychiatric illness.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary: Mental health records dated [REDACTED] [REDACTED] [REDACTED] showed the claimant had somatization disorder, somatoform NOS, opioid dependence and borderline personality disorder. She reported lots of somatic complaints. She believed that she had bipolar disorder, but the report indicated

that it was not borne out by evaluation. It was noted that secondary gain issues were going to make progress difficult (Pg. 562).

A neurological examination dated [REDACTED] showed the claimant's speech was clear and fluent. She had 5/5 strength in the upper extremities and 4/5 strength in her hip flexor and extensors and 5/5 strength in all other extremities. Her gait and station were normal. Deep tendon reflexes were 2+ throughout (Pg. 574).

In [REDACTED] the claimant ambulated with a cane for stability. She had tender points at the cervical and paraspinal muscles. Straight leg raise was negative. Manual muscle testing was reduced in the bilateral hip flexion secondary to pain, 4+ 5-. Facet load test was positive. There was tenderness focally at the thoracic paraspinal muscles. Sensation was slightly altered in the right greater than the left lower extremity, in non-specific distribution to light touch (Pg. 563).

MRI of the lumbar spine dated [REDACTED] showed severe degenerative changes at the L5-S1 level, mild degenerative change at the L4-5 disc level with overall, no significant change from previous testing (Pg. 564-565).

MRI of the right knee dated [REDACTED] showed previous moderate sprain of the medial collateral ligament proximally without meniscal tear, fracture or bone contusion (Pg. 568).

A neurological examination dated [REDACTED] demonstrated an unsteady gait with right knee tenderness (Pg. 576).

On [REDACTED], the claimant was 5'1" and 182 pounds. She had an unsteady gait (Pg. 572).

15. Claimant was denied by SHRT based on Medical Vocational Grid Rule 201.24 as a guide. Footnote 201.00(h) is not applicable.
16. Claimant submitted over 600 pages of medical evidence. Claimant has had numerous radiology reports which find unremarkable findings or, no

significant processes, no severe findings, etc. See for example Exhibits 566, 567 and 568.

17. On [REDACTED] claimant had an ECG with a normal sinus rhythm and no significant findings.
18. Claimant's medical evidence contains a number of references to claimant's report of symptoms far exceeding the medical evidence of record. See Exhibits 562. Claimant has reported that she has bipolar which is not substantiated by the medical evidence.
19. Claimant has a number of radiology reports indicating degenerative changes.
20. Claimant testified that her "Hepatitis C" cannot be treated until she has back surgery [REDACTED]
[REDACTED]
Upon questioning, if she is paralyzed from the waste down [REDACTED]
[REDACTED] Claimant's testimony is not substantiated by the medical evidence.

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. 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 is not disabled pursuant to Medical Vocational Grid Rule 201.24 as a guide.

In reaching this conclusion, it is noted that Footnote 4-201.00(h) is not applicable to the facts herein.

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 under the Medical Vocational Grids, claimant's age at 36 classifies claimant as a "younger individual" under federal and state law, claimant must show that her impairments rise to statutory disability. This definition of disability requires a showing that claimant cannot engage in any type of work at all based upon the medical evidence. This ALJ does not find that claimant's testimony is corroborated by the medical evidence pursuant to the requirements found at 20 CFR 416.913, and .928. Claimant's testimony is not corroborated by the great weight of the medical evidence per 20 CFR 416.928. Claimant's statements of pain are not corroborated pursuant to the perimeters and considerations at 20 CFR 416.929 and .945.

It is also noted that there appears to be some drug seeking issues represented by concerns raised by claimant's participation with Michigan Neurological Associates.

It is also noted in the alternative that claimant has received a final determination on her Social Security application with SSI. In the alternative, under 42 CFR 435, and specifically 42 CFR 435.541 jurisdiction is not proper as claimant has received a final determination. Claimant's medical file contains the impairments claimant listed at application with Social Security which is identical to the impairments listed herein. In the alternative, under this federal regulation, there is no jurisdiction.

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