

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

IN THE MATTER OF:

Reg. No: 2012-58537

Issue No: 2009; 4031

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] 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 testified at the administrative hearing that she had a hearing before a federal ALJ on [REDACTED]. An SOLQ ran [REDACTED] does not show any disposition to date.

8. Claimant is a [REDACTED] standing 5'7" tall and weighing 172 pounds.
9. Claimant does not have an alcohol/drug abuse problem. Claimant indicated she had a history in [REDACTED] and earlier. Claimant does not smoke.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has an Associates Degree in child development which she obtained in [REDACTED]
12. Claimant is not currently working. Claimant last worked as a pre-school teacher in [REDACTED]. Claimant did not testify, but records indicate claimant was receiving unemployment income as of [REDACTED]. Claimant's work history is semi-skilled.
13. Claimant alleges disability on the basis of bipolar disorder with manic major depression, anxiety disorder, post traumatic stress disorder, narcolepsy and asthma.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

A psychiatric medication review dated [REDACTED] [REDACTED] showed the claimant's diagnoses included bipolar disorder, attention deficit hyperactive disorder and generalized anxiety disorder. She had good eye contact and thought processes were logical. Her speech was normal. Mood was dysphoric and anxious with congruent affect. There were no psychotic symptoms (A10 & Pg. 198). Therapy notes dated [REDACTED] showed the claimant was calm and her thoughts were logical. Her affect was variable. She was having some difficulty falling and staying asleep (Pg. 48).

Psychiatric progress notes dated [REDACTED] showed the claimant presented in a somewhat dramatic fashion. At the claimant's last visit, she had announced that she had stopped her Prozac and was feeling much better. The claimant was fully communicative and well groomed, but looked unhappy. Speech was normal, articulate, coherent and spontaneous. She had mild signs of depression present. She was depressed and her affect was constricted. There were no psychotic processes.

Thinking was logical. Thought content was appropriate. Diagnoses included major depressive disorder-recurrent-severe without psychotic features, generalized anxiety disorder, opioid dependence, rule out bipolar disorder, rule out panic disorder without agoraphobia and suspected post-traumatic stress disorder. Medications were going to be reinitiated (Pg. 64).

A physical examination dated [REDACTED] showed the claimant's breath sounds were normal with no crackles or wheezing (Pg. 18). Records dated [REDACTED] [REDACTED] [REDACTED] indicated the claimant had questionable sleep apnea and asthma (Pg. 15).

Analysis:

The claimant had possible sleep apnea. She also had asthma, but her breath sounds were normal without wheezes or crackles. She has a history of depression, possible bipolar disorder, anxiety and attention deficit hyperactive disorder. In [REDACTED], [REDACTED] her thought processes were logical and speech was normal. There were no psychotic symptoms. Her mood was dysphoric and anxious and her affect was congruent. The claimant stopped taking her psychiatric medications in [REDACTED] and in [REDACTED] [REDACTED] she looked unhappy and had mild signs of depression. Her affect was constricted. However, her thinking was logical and thought content was appropriate. Medications were being re-initiated. SHRT denied per Medical Vocational Grid Rule 203.29 as a guide.

15. Claimant testified that she is not capable of taking care of any of her activities of daily living and that her boyfriend does the same. Claimant's testimony is inconsistent with the medical evidence which generally indicates claimant does not have any interference with her activities of daily living from psychologically based symptoms
16. Claimant testified at the hearing that she does not feel that the medical evidence shows her "true colors." Claimant attacked the credibility of the 290 exhibits testifying that her condition is not shown to be as severe as she experiences it. Claimant's report of symptoms out weighs 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).

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 is not disabled under the federal and state definitions pursuant to Medical Vocational Grid Rule 203.29 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.

As noted in the findings of facts, claimant appeared to be collecting unemployment about the time she was alleging disability. While not controlling in and of itself, claimant's representation to the unemployment office that she is ready and willing to work is not consistent with her claim of disability.

Claimant's general testimony regarding the medical evidence is that the evidence fails to reflect claimant's "true colors." Claimant feels that the medical evidence does not indicate the severity of that she experiences her symptoms. Under 20 CFR 416.927, claimant's testimony and symptoms cannot be corroborated by the medical evidence as required under federal and state law. Moreover, claimant's complaints of pain are not sufficiently corroborated or supported by objective medical evidence pursuant to the considerations at 20 CFR 416.929. Under 20 CFR 416.912, claimant has the burden to come forth with sufficient medical evidence to corroborate and support her claims. The medical evidence taken as a whole, fails to do so, even by claimant's own admission. Under the federal and state rules, statutory disability is not shown.

As also noted, there were no psychotic processes in her evaluation pursuant to progress notes of [REDACTED]. Claimant's speech was normal, articulate, coherent and spontaneous. Claimant did have some mild signs of depression present. Claimant also experiences sleepiness and narcolepsy symptoms.

Claimant's problems with regards to some depression and fatigue, unfortunately for claimant, simply are not of the type in vision by the federal and state disability programs which would rise to statutory disability. Thus, 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.

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