

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-24369
Issue No: 2009

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 on [REDACTED]. The claimant appeared and provided testimony. The department witness was [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly determine the claimant did not meet the standard for disability Medicaid (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was a recipient of interim Medicaid.
2. On [REDACTED], the MRT denied.
3. On [REDACTED] the DHS issued notice.
4. On [REDACTED], claimant filed a hearing request.
5. Claimant testified at the administrative hearing that she has an SSI application pending with the Social Security Administration (SSA).
6. On [REDACTED] the State Hearing Review Team (SHRT) denied claimant.

7. As of the date of hearing, claimant was a [REDACTED] standing 5'4" tall and weighing 165 pounds. Claimant has a high school education and one year of college.
8. Claimant testified that she smokes about 1 pack of cigarettes every three days. Claimant testified that she quit drinking heavily in [REDACTED] and only drinks on rare occasions now. The claimant testified that she does not use illegal drugs.
9. Claimant has a driver's license and is able to drive an automobile.
10. Claimant is not currently working. Claimant last worked in [REDACTED] as a driver, delivering parts. Claimant has also worked as a valet parking attendant and a manager of a restaurant.
11. Claimant alleges disability on the basis of lower back pain, hypertension, diabetes, high cholesterol and sleep apnea.
12. On [REDACTED], the claimant was admitted into the hospital with mental status changes. The claimant was found to have diabetic ketoacidosis (DKA), which was attributed to noncompliance with outpatient medical recommendations. The claimant had acute renal failure secondary to the DKA and acute leukocytosis, sepsis, and encephalopathy, along with delirium tremens from alcohol withdrawal. The claimant was discharged on September 6, 2009 and advised to follow-up for an outpatient cholecystectomy.
13. On [REDACTED], the claimant was seen in the emergency room in Georgia for severe hyperglycemia secondary to decompensated diabetes mellitus secondary to nonadherence.
14. An [REDACTED] mental health intake assessment indicated the claimant presented for help with feelings of depression and trouble sleeping. Claimant reported troubles with depression and sleep since [REDACTED] when her sister was killed. The claimant's speech was normal rate and rhythm. Her mood was dysphoric. Claimant denied any current suicidal thoughts or attempts. Claimant's thought process was coherent, logical and goal-directed. Claimant's insight and judgment were fair. Claimant was diagnosed with major depressive disorder and alcohol abuse and assigned a Global Assessment of Functioning (GAF) of 55.
15. On [REDACTED], the claimant participated in an independent medical examination. Physical examination of the extremities found peripheral pulses intact. Handgrip was good bilaterally. Digital dexterity was intact. Claimant got on and off the examination table with no difficulty. She could do tandem, tiptoe and heel walking with no problems. She bends and

stoops and arises from it with no problems. She squats and arises from it but has to hold onto the examination table when arising. Range of motion of the cervical spine and lumbar spine was within normal limits. Range of motion of all joints was within normal limits. Straight leg raising is 70 degrees bilaterally. There were no motor or sensory deficits. Claimant was noted for poorly controlled hypertension and diabetes.

16. The claimant also underwent an independent psychiatric examination on [REDACTED]. Claimant reported becoming depressed after her sister's death in [REDACTED]. Claimant indicated that she drinks at least three times per week and gets more depressed on those days. Claimant was in touch with reality. Her psychomotor activity was normal. She had no motivation. Her thought process was well organized and easy to follow. She denied suicidal or homicidal ideation. She feels hopeless and helpless. She admits to sleep disturbances and denied weight loss. Her mood was depressed; her affect was constricted and appropriate. The claimant was alert and oriented x 3. Claimant was diagnosed with alcohol abuse, dysthymic disorder and assigned a GAF of 47.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8.

In considering the great weight of the evidence, it is found the claimant retains the capacity to perform simple and unskilled work of medium exertional level. In making this determination, it is noted that the claimant is not receiving any treatment for any back conditions that would limit her physically. While the claimant reports back pain, there is nothing in the record to substantiate any physical limitations. Also, while the claimant indicates she has sleep apnea, there is no support for this diagnosis in the medical record.

Further, while the claimant does have diabetes, hypertension and high cholesterol, these conditions would be largely under control and would not affect claimant's ability to work if claimant followed treatment protocols. Both times claimant was hospitalized for DKA/hyperglycemia, the claimant was noted to be medication noncompliant. Further, the claimant was also drinking heavily, which would clearly cause her blood sugar to elevate and/or fluctuate.

Claimant's depression appears to be the most limiting condition, however, the claimant has had no psychiatric hospitalizations and the medical evidence shows the claimant would still be capable of simple and unskilled work. It is noted that Claimant's alcohol abuse clearly contributes to her depression as well. Claimant admitted in her [REDACTED] examination that she still drinks heavily at least three times per week. Claimant's depression symptoms would lessen if she stopped abusing alcohol. Claimant has been advised to avoid substance abuse on previous occasions. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.930.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565,

416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant can return to past relevant work on the basis of the medical evidence. Claimant's previous work would be classified as light and medium work according to the Dictionary of Occupational Titles and claimant's testimony. Further, this work is simple and repetitive. Thus, claimant would retain the capability to perform this work.

Claimant has submitted insufficient objective medical evidence that she lacked the residual functional capacity to perform medium work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform her prior work. Claimant is disqualified from receiving disability at Step 4 based upon the fact that she has not established by objective medical evidence that she could not perform medium work.

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).

As noted above, claimant has the burden of proof pursuant to 20 CFR 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.

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/ _____
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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.

SLM/jk

cc: _____
MAHS