

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-29123
Issue No: 2009; 4031

[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. [REDACTED] provided testimony on behalf of the department.

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 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. Claimant testified at the administrative hearing that she has an SSI application pending with the Social Security Administration (SSA).
7. On [REDACTED] the 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.

8. As of the date of hearing, claimant was a [REDACTED] standing 5'7" tall and weighing 215 pounds. Claimant has an 11th grade education.
9. Claimant testified that she smokes approximately one pack of cigarettes per week, does not drink alcohol or use any illicit or illegal drugs.
10. Claimant has a driver's license and is able to drive most of the time.
11. Claimant is not currently working. Claimant last worked in [REDACTED] for [REDACTED]. Claimant also has an employment history of driving school buses and working for temporary agencies.
12. Claimant alleges disability on the basis of a left ankle fracture, back pain, asthma, sleep apnea, deep venous thrombus, (DVT) and pulmonary embolisms.
13. On [REDACTED], the claimant had an x-ray due to an ankle injury and pain. The claimant was found to have a fracture of the distal fibula with bimalleolar soft tissue swelling.
14. On [REDACTED] the claimant underwent an open reduction and internal fixation on the left ankle.
15. The claimant was admitted to the hospital again on [REDACTED] with difficulty breathing. The claimant had a CT scan of the chest performed which showed a pulmonary embolism in her right lower lobe of her lung. The claimant was also found to have a deep venous thrombosis. The claimant was started on Coumadin and was discharged on [REDACTED].
16. A [REDACTED] medical examination report indicates the claimant did not follow up on her ankle after [REDACTED].
17. On [REDACTED], claimant presented to the emergency room with multiple complaints of feeling dizzy and intermittent chest pain. The claimant was extremely vague on her history and was admitted to rule out myocardial infarction and a Dobutamine stress echo was ordered. Cardiac enzymes were negative; however, as the hospital prepared to perform the test, the client refused to have the test performed and was discharged in good condition on [REDACTED].

18. A [REDACTED] x-ray of the lumbar spine found mild degenerative changes, no evidence for acute traumatic injury.
19. On [REDACTED] the claimant had a CT of the thorax. The claimant had reported chest pain and indicated that she had been off her Coumadin for three days. The claimant had a negative finding for pulmonary embolism. There was no acute intrathoracic.
20. On [REDACTED] the claimant had a CT of the brain due to a headache. The impression was a negative examination without evidence of cortical infarction, parenchymal hemorrhage or mass. There was also no significant interval change from a prior examination of [REDACTED]
21. The claimant has had numerous emergency room visits for complaints such as headaches, dizziness, eye problems, jaw pain, possible sexually transmitted disease, vaginal discharge and low Coumadin levels due to claimant's alleged non-compliance with treatment recommendations.

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).

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

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). To meet the durational requirements for the MA program, the claimant's condition must last or be expected to last for a continuous period of 12 months. 20 CFR 416.909. An impairment or combination of impairments is not severe and a finding of not disabled is made at Step 2 when medical evidence establishes only a slight abnormality or combination of slight abnormalities, which would have no more than a minimal effect on an individual's ability to work, even if the individual's education and/or work experience were specifically considered. Social Security Ruling 85-28. In other words, a finding of no severity is appropriate when a person's impairments have no more than a minimal effect on his or her physical or mental abilities to perform basic work activities. The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The claimant's alleged impairments in this case are either not severe or do not meet the durational requirements for MA. The claimant has no official diagnosis of sleep apnea or anxiety. The claimant did have a DVT and a pulmonary embolism, but these were treated and resolved. The claimant does have mild degenerative changes in her back, but these are mild and should not significantly interfere with her basic work activities. Again, the claimant may have asthma, but this condition should not significantly interfere with her ability to perform basic work activities. The claimant's left ankle fracture happened in [REDACTED] and the claimant quit treating by [REDACTED] for that ankle fracture. Further, while the ankle fracture may have been a severe condition, it is not found that it would preclude all levels of activity for more than 90 days, certainly not for 12 months. Therefore, in this case, the medical evidence does not document severe medical conditions that would significantly impact the claimant's ability to work, thus the claimant is denied at Step 2 of the analysis.

The claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe

enough to reach the criteria and definition of disability. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program or for the SDA program.

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