

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-39421

Issue No: 2009; 4031

[REDACTED]

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 had a previous application dated [REDACTED] which went before Judge [REDACTED] [REDACTED], Register [REDACTED] 6. That decision is adopted and incorporated by reference herein.
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. 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.

7. Claimant testified that he has an SSI application pending with the Social Security Administration (SSA). An [REDACTED] SOLQ verification does not indicate that claimant has no application pending with SSA.
8. Claimant is a [REDACTED] standing 5'9" tall and weighing 280 pounds. Claimant's body mass index (BMI) is 41.3 on the BMI, classifying claimant as morbidly obese.
9. Claimant does not have any significant [REDACTED] alcohol/drug abuse problem or history. Claimant smokes approximately one pack or more of cigarettes per day. Claimant has a nicotine addiction.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has a high school diploma. Claimant is a licensed truck driver.
12. Claimant is not currently working. Claimant last worked [REDACTED] as a truck driver [REDACTED]. Claimant testified that he was injured and had a settlement. Medical evidence indicates that controversy between claimant requesting a leave of absence and claimant arguing that he was not able to work.
13. Claimant alleges disability on the basis of degenerative disc disease (DDD), hypertension, depression, personality disorder and polysubstance abuse.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

MRI: Mild DDD T11–T12 and L3-S1; page 60. Office visit: complains of sudden onset of depression; overall normal examination with the exception that noted to be anxious and depressed; page 5, [REDACTED]. Office visit: depression began six months previously secondary to work stressors; only noted to be anxious; page 21, [REDACTED]. Evaluation: adjustment disorder and personality disorder; of note – opinion that claimant interest in treatment is to maintain “off work” status, does not present as being an avid participant in treatment; page 48, [REDACTED]. Note: claimant recently quit job when cleared to return to work; page 82, [REDACTED].

Analysis: The claimant reports a history of psychiatric symptoms, but the medical evidence of record also indicates that the claimant has been noted to have little interest in treatment. The claimant additionally admits to quitting last job when cleared to return to work. There is a history of polysubstance abuse with no record of current abuse. There is evidence of mild DDD with no substantiated limitations. Based upon the lack of credibility of personal presentation and the objective medical evidence, the evidence does not support any severe limitations. Denied per 20 CFR 416.921(a).

15. The subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

Medical summary: New information. Community Mental Health clinical progress notes dated [REDACTED], [REDACTED] the claimant's thoughts were clear, connected and organized. He reported feelings of passive suicide and ongoing depression. He reported his personalities battling with each other. Specifically he mentions two personalities – Sierra [sic] who is nurturing and Thomas who is angry. He reports that he is able to hear peoples' thoughts. He did not appear to be responding to internal stimuli during the appointment. The claimant reported that the lawyer helping him appeal Social Security advised him not to seek employment while the appeal is in process (A39).

Mental Health Physician Review dated [REDACTED] showed the claimant stated that [REDACTED] was not there. His alter Sarita stated that she had been there for awhile. The claimant stated that his alter was [REDACTED]" The notes stated, [REDACTED] (A22). Diagnosis was mood disorder NOS and learning disability NOS (A23).

Mental Health records dated [REDACTED] showed the claimant had been treated and medically cleared at Sparrow Hospital Emergency Room prior to being referred to mental health, secondary to overdosing on [REDACTED] He had a history of ETOH and marijuana abuse, but denied use of marijuana or other drugs in many years. He was prescribed

Latuda and Pristiq, but he wasn't taking the Pristiq. His grooming and hygiene were adequate. His speech was clear, coherent and normal in rate and rhythm. His thoughts were logical and connected and there was no evidence that he was responding to internal stimuli during the assessment. He noted that he does occasionally experience auditory hallucinations and the last time was that morning. He noted that they were persecutory in nature at that time and that contributed in part, to his suicide attempt. He also had been fairly depressed for the past several months. He was frustrated by repeated rejections for Medicaid and he was also turning 50 in a few days and that was depressing to him. He reported that his mother recently told him that she didn't want anything to do with him. He reported that his mother and step father sold him into prostitution at age 9 and that continued until he was 16. Psychotic disorder NOS, rule out dissociative identity disorder (DID) and rule out gender identity disorder (A51).

Analysis: ...exams of [REDACTED] do not indicate any back or neurological limitationsPsychological evaluation of [REDACTED] [REDACTED] indicates MMPI provided highly invalid profile. Validity configuration could be interpreted as a cry for help, but the degree of symptoms endorsement was quite excessive. His functional behavior was noted to be clearly at odds with his profile on the MMPI. (Exhibit 5).Never had any psychiatric hospitalizations per [REDACTED] evaluation. Claimant quit his job in [REDACTED] when he had been cleared to work. Mental Health records dated [REDACTED] indicate the claimant appeared to be malingering at times. [REDACTED] claimant reported taking an overdose. Speech was clear, coherent and normal in rate and rhythm. His thoughts were logical and connected. No evidence that he was responding to internal stimuli during evaluation. Claimant is not found to be completely credible. Denied per 204.00 as a guide.

16. New medical evidence includes a letter/progress note from claimant's physician indicating claimant has psychosocial issues which the physician spent a good amount of time attempting to work through with claimant. Claimant was also given a referral for an attorney.

17. Claimant has been repeatedly diagnosed with hypertension, insomnia, fatigue, depression and anxiety disorder. There is no indication that these interfere with his ability to engage in work or work like settings.
18. A psychological evaluation of [REDACTED] states in part that the MMPI-II provided a highly invalid profile. (Exhibit 49).
19. A physicians' note per Exhibit 82 indicates [REDACTED] is [REDACTED]
20. Claimant had a number of notes from [REDACTED] Associates in [REDACTED] giving claimant numerous notes to be off for a few days at a time, with no restrictions starting [REDACTED]
21. Claimant testified at the hearing that he does many activities of daily living independently, as well as for his partner who is employed - [REDACTED] [REDACTED] Claimant does not need any assistance with his bathroom and grooming needs. Claimant is able to prepare a sandwich, dust, wash dishes, do laundry, etc.

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 decision in first finding no severity based upon the medical evidence at that time and secondly finding no statutory disability on the basis of Medical Vocational Grid Rule 204.00 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 does not have any significant/severe physical limitations. Claimant's primary alleged disability is based upon a mental impairment(s). However, much of the information in claimant's file finds some issues with regards to reliability and validity of the examinations and effort. While the issues regarding validity and effort on behalf of claimant are noted in the medical evidence are not material to the conclusion of the ALJ herein, these issues do go to the overall weight of the great bulk of the medical evidence pursuant to the issues and considerations found at 20 CFR 416.928.

Some of the exhibits indicate claimant is capable of working and has been returned to work.

Other evidence indicates normal days with degenerative changes. The radiology reports indicate mild DVD. Statutory disability does not recognize degenerative changes as statutorily disabling as they are often normal aging. Normal aging is not recognized as statutorily disabling.

Mental status evaluations indicate that claimant's speech was clear, coherent and normal in rate and rhythm. Claimant had logical and connected thoughts and no evidence that he was responding to internal stimuli during the evaluation. There is also a number of reports which indicate no interest in treatment and/or failure to participate with recommended treatment which raises problems in terms of compliance and the failure to follow recommended treatment federal guidelines found at 20 CFR 416.930. Claimant is also quite independent with his activities of daily living and in fact does many of these for his partner.

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