

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-45155

Issue No: 2009

[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) 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 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 on the grounds that claimant was engaged in SGA. Claimant indicated on his application that he was working as a heavy machine operator at 20 hours per week, \$20 per hour beginning in [REDACTED]. At the administrative hearing, claimant indicated that he stopped working on [REDACTED]. The undersigned ALJ forwarded this information to SHRT along with claimant's request to hold the record open for the submission of new and

additional medical documentation. On [REDACTED], SHRT approved claimant's MA-P beginning when claimant [REDACTED]. All months prior to including the retro months were denied.

7. Claimant has not applied for SSI with the Social Security Administration (SSA).
8. As of the date of application, claimant was a [REDACTED] standing 5'11" tall and weighing 260 pounds. Claimant's date of birth is [REDACTED]. Claimant's BMI (body mass index) is 36.3 classifying claimant as obese.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke cigarettes.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has a high school education.
12. As of the date of application, claimant was working 20 hours per week at \$20 per hour. Testimony on the record is that claimant discontinued working on [REDACTED]. Claimant's work history is medium, skilled.
13. Claimant alleges disability on the basis of chest pain and heart problems.
14. The [REDACTED] subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

[REDACTED] - cardiac evaluation (Pg. 99) – indicated that the physical examination was normal. Claimant has a history of ASHD status post remote acute inferior wall myocardial infarction with an ischemic stress echocardiogram (achieved 7 METS) and recurrence of symptoms, anxiety and depression, intolerance to beta blockers and diabetes. Proceeding with cardiac catheterization. [REDACTED] – cardiac catheterization (Pg. 71) – indicated the catheterization revealed 95% mid LAD lesion and 70% proximal LAD status post successful stenting. [REDACTED] physical examination (Pg. 2) – Indicated that claimant complained of recurrent chest pain. Angiography showed widely open stent segments and no change from previous catheterization. [REDACTED] follow-up exam (Pgs. not numbered) – Indicated claimant complained of increasing pain with left headaches. His BMI is 34.31. Blood pressure was 178/98. He

demonstrated decreased range of motion in the cervical spine, he was neurologically stable.

Claimant has a history of coronary artery disease and degenerative disc disease (DDD). His cardiac status is stable status post stent placement in [REDACTED]. Despite back pain, he is ambulatory with normal strength. He has limited range of motion. As a result of his conditions he is restricted to performing light work. Claimant is not currently engaging in substantial gainful activity at this time. The claimant's severe impairments do not meet/equal the intent or severity of any Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Claimant's past work was performed at the medium exertional level. Therefore, claimant is unable to perform his past work. However, based on the claimant's vocational profile, MA-P is approved effective [REDACTED]. As of [REDACTED], Vocational Rule 202.06 applies as a guide and directs a decision of disabled. Prior to [REDACTED] Vocational Rule 202.13 applied as a guide and directed a decision of not disabled. Therefore, retroactive MA-P is denied.

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).

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 finding claimant disabled when he turned [REDACTED] pursuant to Medical Vocational Grid Rule 202.06 as a guide requiring a finding of disability. Prior to [REDACTED] Medical Vocational Grid Rule 202.13 must be applied and requires a finding of not disabled.

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).

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 incorrect as to a finding of not disabled for all months.

Accordingly, the department's determination in this matter is **REVERSED**.

This ALJ finds claimant disabled no sooner than [REDACTED] reversing the initial denial of claimant.

The department is ORDERED to make a determination if claimant meets the non-medical criteria for the MA program beginning in [REDACTED]. If so, the department is ORDERED to open an MA case from [REDACTED] forward, without any retro months and issue supplemental benefits to claimant.

The department is ORDERED to review this case in one year from the date of this Decision and Order.

/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