

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2012-51272  
Issue No: 2009

[REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Suzanne L. Morris

**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 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 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 a disability application pending with the Social Security Administration (SSA).
7. On [REDACTED] the State Hearing Review Team (SHRT) denied claimant.

8. As of the date of hearing, claimant was a [REDACTED] standing 5'2" tall and weighing 180 pounds. Claimant has a high school education.
9. Claimant testified that she smokes about ½ pack of cigarettes per day; drinks about 1 – 2 drinks per day; and does not use illegal drugs.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant is not currently working. Claimant last worked in [REDACTED] as an assistant manager for a [REDACTED]. Claimant also worked as an assistant manager for a [REDACTED].
12. Claimant alleges disability on the basis of depression, anxiety, and arm, shoulder, back, foot and neck pain.
13. Claimant has a history of a right ankle ligament reconstruction in 2000. Claimant fell and reinjured the ankle in [REDACTED]. On [REDACTED] the claimant underwent decompression of the sural nerve with repair of one nerve fascicle and re-repair of anterior talofibular ligament and calcaneofibular ligament and retinaculum with closure and casting.
14. [REDACTED] x-rays of the hips and pelvis was unremarkable.
15. [REDACTED] x-rays of the lumbar spine found mild degenerative changes.
16. [REDACTED] x-rays of the cervical spine found mild degenerative spondylosis of multiple disc spaces; multifocal facet arthropathy; and mild bilateral upper cervical foraminal narrowing.
17. An independent medical evaluation was conducted on [REDACTED]. There was no evidence of joint laxity, crepitance or effusion. Grip strength remained intact. Dexterity remained unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had mild difficulty getting on and off the examination table, was unable to walk heel and toe, moderate difficulty squatting, and no difficulty hopping on the left foot and was unable to on the right. There was mild tenderness over the lumbar spine. Straight leg raising was negative. There was no paravertebral muscle spasm. Motor strength was 4/5 in the right foot. There is neuropathic pain over the lateral aspect of the right foot. There is hyporeflexia in the right ankle. The claimant walked with a moderate with sided limp without the use of an assist device. The claimant did have mildly diminished range of motion to the right foot with associated weakness. Claimant's degree of impairment appeared mild to moderate but no remediable.

18. An [REDACTED] psychiatric evaluation found the claimant indicating she was depressed. The claimant indicated that she had no previous psychiatric hospitalizations and no suicide attempts. The claimant's affect was fairly broad. Claimant denied psychotic symptoms. Her speech was of normal tone and volume and non-pressured. Her thoughts were organized. She had adequate insight and judgment. Attention and memory were grossly intact. Claimant was diagnosed with major depressive disorder NOS, recurrent, mild, alcohol abuse, nicotine dependence, history of cocaine abuse, in reported remission, anxiety disorder NOS and assigned a GAF of 55 – 60.
19. On D [REDACTED] 28, 2011, the claimant presented to the emergency room for right arm pain. The claimant had slight tenderness to the anterior aspect of the right shoulder girdle to palpation. She had a positive Neer sign. She had pain with passive range of motion, but not as much with active range of motion. She has limited external and internal rotation due to pain, though she could perform the maneuvers. Negative cross-over test. No gross motor or sensory deficits appreciated. Claimant was diagnosed with shoulder impingement syndrome.
20. On [REDACTED] a right shoulder x-ray showed no significant bony articular or soft tissue abnormality except for minor hypertrophic changes at the acromioclavicular articulation. The soft tissues were grossly normal.
21. On [REDACTED] [REDACTED] [REDACTED] a right shoulder MRI showed subacromial/subdeltoid bursal fluid consistent with bursitis. There was no evidence of a rotator cuff tendon tear.
22. A [REDACTED] psychological assessment found the claimant to have no psychomotor retardation or agitation. She walked without much difficulty. She was pleasant and cooperative. She smiled, her affect was broad. Her mood was euthymic and speech was of normal tone and volume and was non-pressured. Her thoughts were organized. There was no suicidal or homicidal ideation. She was future oriented. She had adequate insight and judgment. Attention and memory were grossly intact. She was alert and oriented x 3. Her diagnoses remained the same.

### **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.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in light work activities on a regular and continuing basis.

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. The claimant defined her previous work history as an assistant manager in her Work History Report (SSA-3369-BK) for the Social Security Administration as light in exertional level. The Dictionary of Occupational Titles also indicates that an assistant manager position would be light in exertional level. Thus, this Administrative Law Judge finds that the claimant would be capable of her previous work as an assistant manager as it is light in exertional level as testified to and as included in the Dictionary of Occupational Titles. Therefore, claimant is disqualified from receiving disability at Step 4 of the analysis.

The 6<sup>th</sup> 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 (6<sup>th</sup> 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/ \_\_\_\_\_  
Suzanne L. Morris  
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.

SLM/jk

cc:



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