

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-51978

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]

**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's record in this case reflects at least one prior denial by SHRT and one prior decision by a MAHS Administrative Law Judge (ALJ) on [REDACTED]
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.

7. The department had an SOLQ showing claimant was denied on [REDACTED] a Federal ALJ pursuant to a [REDACTED] application. No appeal is pending. Claimant has received a final determination. Claimant alleges worsening condition, but had no testimony to support the same. Claimant alleged fibromyalgia at application herein as well as with a subsequent nurse practitioner diagnosing claimant with fibromyalgia. A nurse practitioner is not given substantial weight under the law.
8. As of the date of application, claimant was a [REDACTED] standing 5'7" tall and weighing 177 pounds. Claimant is classified as over weight with a Body Mass Index (BMI) of 27.7 on the BMI.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes a ½ pack of cigarettes per day and has a nicotine addiction.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has "some college."
12. Claimant is not currently working. Claimant last worked in [REDACTED] as a lab technician. Claimant has also worked in "quality control" in an office environment. Claimant's work history is semi-skilled.
13. Claimant alleges disability on the basis of depression, anxiety, bipolar disorder and fibromyalgia.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical summary:....CMH psychological evaluation of [REDACTED] notes pleasant and cooperative, stable. She had congruent affect. Hygiene and grooming were normal. She had no agitation and denied suicidal and homicidal ideation. Her insight and judgment was fair to good. The claimant stated the medication was working well. She had no trouble with thoughts. According to the activity of daily living, she reads and shops with assistance....Denied per 204.00 as a guide.
15. On [REDACTED] issued a decision upholding the department's denial of claimant's [REDACTED] MA application with

the Michigan Department of Human Services. [REDACTED]  
That decision is adopted and incorporated by reference herein.

16. Claimant testified at the administrative hearing that she is not capable of engaging in any activities of daily living. Claimant subsequently testified that she did engage in her activities of daily living with assistance from both parents. Claimant lives alone and does not reside with her parents.

### **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).

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, the evidence indicates that claimant has received a final determination by SSA on an SSI application within the parameters identified at 42 CFR 435.541. This federal

regulation indicates that an SSA disability determination is binding on the agency until that determination is changed by the SSA. Certain exceptions apply which are not indicated by the facts herein. Thus, this ALJ finds no jurisdiction to proceed under 42 CFR 435.541. A sequential analysis will be applied in the alternative.

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). Claimant's primary physical alleged impairment is fibromyalgia. The undersigned ALJ does not find sufficient medical documentation to indicate that the medical evidence herein meets severity as it is required under the law. Even though this is a *de minimus* standard, there is insufficient medical evidence or no medical evidence which would indicate severity for the fibromyalgia. This analysis will continue with regards to claimant's mental impairment(s).

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's fibromyalgia with regards to the physical issues does not prohibit claimant from returning to past relevant work as the condition is not severe based upon the medical evidence and the requirements found at 20 CFR 416.920. With regards to the claimant's mental impairment, this ALJ finds that claimant can return to past relevant work on the basis of the medical evidence.

As noted in the findings of facts, SHRT went to the fifth step of the analysis-the Medical Vocational Grids. These grids determine a residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). SHRT found that the grids indicate no disability pursuant to 204.00 as a guide. This footnote is used typically where there is strictly a mental impairment left which in essence, indicates the same finding of step four – that claimant does not meet statutory disability and can return to work.

Thus, there is no disability shown based upon the step four analysis as well as step five for the reasons set forth above.

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).

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.

Claimant alleges disability on the basis of both mental and physical. With regards to the physical, this ALJ does not find that the fibromyalgia is sufficiently documented to rise to the level of statutory disability as a severe impairment.

With regards to claimant's drug addiction, the smoking can be treated with cessation.

With regards to claimant's weight, the affects of this can be treated with diet and exercise.

Medical evidence indicates with regards to claimant's mental impairment(s) that claimant had an evaluation indicating that she had a congruent affect, was pleasant and cooperative, grooming normal. Claimant had no agitation. Claimant's insight and judgment was fair to good. Moreover, medication was working well and thus, claimant's symptoms are well managed. Claimant had no trouble with her thoughts.

With regards to claimant's argument that her symptoms affect her in such a way that she is incapable of taking care of her ADL, claimant's complaints are not supported by the great bulk of the medical evidence. 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5). Moreover, the fact that claimant alleges disability on the basis that she cannot take care of any of her ADL and yet lives alone, is patently inconsistent. Nor does the medical evidence support claimant's complaints that she cannot take care of her ADL pursuant to the requirements under the federal regulations found at 20 CFR 416.913, .927 and .928.

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/ \_\_\_\_\_

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.

JGS/jk

cc: \_\_\_\_\_  
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