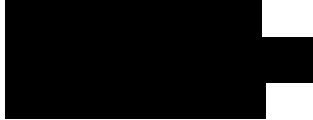


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No: 201268467
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 27, 2012
Genesee County DHS #02

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, an in-person hearing was held. Claimant was represented by [REDACTED] with [REDACTED] of [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 March 9, 2012, Claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 2 months of retro MA.
3. On May 8, 2012, the MRT denied.
4. On May 15, 2012, the DHS issued notice.
5. On July 31, 2012, claimant filed a hearing request.
6. On September 12, 2012, 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 February 12, 2013 SHRT once again denied claimant.

7. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a [REDACTED]-year-old male standing 6'1" tall and weighing 142 pounds.
9. No significant alcohol/drug abuse problems. Claimant does have an alcohol abuse history in remission. Claimant smokes approximately 5-6 cigarettes per day. Claimant has a nicotine addiction.
10. Claimant has a [REDACTED] and can drive an [REDACTED]
11. Claimant has [REDACTED] grade education.
12. Claimant is not currently working. Claimant last worked in 2009 as a health care provider. Claimant has also worked in fast food. Claimant served three years in the [REDACTED] with an [REDACTED] [REDACTED]
13. Claimant alleges disability on the basis of gunshot wound, back pain, hypertension, neuropathy.
14. The 9-12-12 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

The claimant was admitted January 28, 2012 to February 15, 2012 after sustaining a through and through gunshot wound to the left thoracoabdominal region. He was incubated in the [REDACTED] bilateral chest tubes were placed and he was [REDACTED] taken to [REDACTED] In [REDACTED] he was found to have lacerations of the stomach, near amputation of the left portion of the liver, colon laceration and splenic laceration. Blood alcohol level was 321. His condition improved with treatment and he was eventually discharged in improved condition.

A physical examination dated July 31, 2102 showed that claimant was 6'1" and 150 pounds. The claimant is right hand dominant. Grip was 80 pounds on the right and 40 pounds on the left. He could pick up and manipulate coins with both hands. He has dome difficulty bending and stooping. [REDACTED] and [REDACTED] were negative. He could walk heel and toe and tandem gait. He did present with a cane, however, medically it was not indicated. Patellar and Achilles reflexes were +1. Neurovascular status of his feet was satisfactory. He has a scar present on the dorsal aspect of the left wrist over the first dorsal compartment. He had positive Tinel's with some hypoesthesia about the radial nerve (records from DDS).

Recommendation: Denied per 202.20 as a guide.

15. Claimant has had a number of mental status evaluations indicating that Claimant is experiencing significant post traumatic stress disorder from the gunshot wound as documented in the medical evidence.
16. A mental residual functional capacity assessment- DHS 49 E has claimant markedly limited in seven categories out of twenty. Claimant is unable to maintain attention and concentrate for extended periods; to perform activities within a scheduled day, or maintain attendance, or be punctual within customary tolerances; claimant has a markedly limited ability to work in coordination or proximity to others without being distracted by them; Claimant would have great difficulty maintaining a workday without interference from psychologically based symptoms; Claimant has a markedly limited ability to interact appropriately with the general public.
17. Claimant is in need of psychological assistance and therapy. Claimant's current condition is expected to be treatable and remedial with therapy and not a lifetime affliction.
18. Claimant meets or equals listing on 12.06.

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 addiction 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).

After careful review of the substantial and credible evidence on the whole record, the undersigned administrative law judge finds that Claimant meets or equals listing 12.06. Claimant submitted over 300 exhibits of medical evidence documenting, supporting, and collaborating statutory disability as defined under 12.06 pursuant to the issues and requirements found at 20 CFR 416.913.

It is noted that the documentation indicates that Claimant's condition should improve with treatment and is not expected to be long-term with proper treatment.

It is also noted that certain case law has played a significant role in this decision. The 6th Circuit has held that where an individual needs treatment and cannot afford the treatment, a severe or disabling impairment continues to be severe or disabling. *McKnight v Sullivan, Secretary of Health and Human Services*, 927 Fed Report 2d 241, December 1990.

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.

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

The department is ORDERED to make a determination if claimant meets the non-medical criteria for the MA program. If so, the department is ORDERED to open a case from the date of application, including any retro months if eligible, and issue supplemental benefits to claimant.

The department is ORDERED to review this case in eight months 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: 3/28/13

Date Mailed: 3/29/13

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
- the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JGS/hj

cc:

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