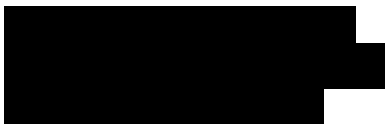


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201271989
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: November 28, 2012
Wexford County DHS

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 on November 28, 2012.

ISSUE

Did the Department of Human Services (Department) properly deny claimant's Medical Assistance (MA) and State Disability Assistance (SDA) at review?

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 February 17, 2009 MRT approved Claimant MA and SDA. MRT continued on March 1, 2010.
2. On February 14, 2012, the DHS scheduled Claimant's MA-P and SDA for review.
3. The Department in error issued a closure letter for claimant due to excess assets.
4. On May 7, 2012, MRT denied Claimant based on disability. MRT failed to apply the review standard.
5. On May 11, 2012, the Department issued a Notice of Closure. On May 24, 2012 Claimant filed a hearing request. The Department did not reinstate the action pending the outcome of the hearing.

6. On September 13, 2012, the State Hearing Review Team (SHRT) denied claimant. Pursuant to claimant's request to hold the record open for the submission of new and additional medical documentation, on February 28, 2013, SHRT once again denied claimant. SHRT applied the review standard as well as a new application standard.
7. Claimant has been denied SSI by SSA due to an appeals decision. That denial was within twelve months of claimant's current review. Claimant has had prior denials. Claimant has reapplied.
8. As of the date of review, claimant is a [REDACTED]-year-old male standing 5'11" tall and weighing 345 pounds. Claimant is morbidly obese with a BMI index of 48.1. Claimant suffered a [REDACTED] [REDACTED] in [REDACTED] and indicates that since that time he has gained 100 pounds.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant testified that he quit smoking as of the date of his heart attack on December 18, 2006. Contrary to medical documentation in claimant's copious medical file of over five hundred pages repeatedly indicates that claimant continued to smoke after that date and was advised repeatedly to cease smoking. Claimant was not a credible witness.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has a [REDACTED] grade [REDACTED]
12. Claimant testified that he has not worked since his heart attack in 2006. Claimant's work history is medium exertional, unskilled; heavy exertional, semi-skilled employment.
13. Claimant alleges continuing disability on the basis of arthritis, heart issues, obesity, thyroid issues, and depression.
14. The September 13, 2012, SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

*** 2/2009 approval***

1/1/2007 - 12/28/09, exhibit 259, cardiac catheterization: partial report noting balloon angioplasty and stent to left anterior descending artery; ejection fraction noted to be 30%.

5/1/2008, [REDACTED], 5/1/2008, exhibit 252, office visit: recommends defibrillator secondary to ejection fractions from 20-35%, scheduled and performed as noted on exhibit 254.

3/2010 review approval

██████████, 1/19/2010, exhibit 192, office visit: stable post-myocardial infarction with stent and defibrillator.

██████████, 1/19/2010, exhibit 190, office visit: history of anterior wall infarction 2006 with stent to left anterior descending artery, has defibrillator; also noted for morbid obesity and arthritis left ankle, ejection fraction 35% per ECHO exhibit 193; stable examination.

5/2012 and 8/2012 denials – medical evidence the same

██████████, 1/ 5/2011, exhibit 67, office visit: history of myocardial infarction with left ventricular failure post-stent and defibrillator; continues to smoke; stable from cardiac view; examination within normal limitations.

3/12/2012, exhibit 31, treating source: obese with history of myocardial infarction; 71" 350 pounds.

██████████, 5/28/2012, exhibit 50, treating source: ejection fraction 30-35%; stable examination.

Analysis:

The medical evidence indicates that there has been significant medical improvement in the Claimant's condition from that evidenced in the MRT determinations from 2/17/2009 and 3/1/2010.

The medical evidence of record indicates that the Claimant would reasonably retain the ability to perform sedentary exertional tasks. There is no evidence of a psychiatric impairment.

15. The subsequent February 8, 2013 SHRT decision is adopted and incorporated by reference herein/to the following extent:

Analysis:

The newly presented evidence is a MSO that the Claimant is disabled. While this opinion has been considered, statements of disability are reserved to the Commissioner/State.

The medical evidence continues to indicate that there has been significant medical improvement in the Claimant's condition from that evidenced in the MRT determinations from 2/17/2009 and 3/1/2010.

The medical evidence of record continues to indicate that the Claimant would reasonably retain the ability to perform sedentary exertional tasks. There is not evidence of a psychiatric impairment.

Denied per 20 CFR 416.920(e) and (g).

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 (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 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 administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and the 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.

Federal regulations and State law require very specific considerations and issues which must be applied at review by the forum. These regulations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do

work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

As noted in the review standards, the first two prongs require a showing that there has been improvement, and that the improvement is related to the ability to engage in work or work-like settings.

Pursuant to the medical evidence taken as a whole, the medical evidence supports a finding that there has been improvement from the 2007 cardiac catheterization and ejection fractions. Overtime, Claimant's ejection fraction has gone from 30% to 35%. This is actually quite amazing considering that during that time Claimant testified that he has put on 100 pounds. In any case, this is an improvement. Moreover, evaluations indicate that Claimant has a normal and is in stable examination state. Improvement has been shown.

The remaining five steps are essentially the sequential analysis. Under the sequential analysis, where there is an adverse decision by SSA, there is no jurisdiction pursuant to 42 CFR. Thus, the undersigned Administrative Law Judge does not have the jurisdiction to make a substantive review as claimant has received an adverse SSA decision by the appeals council within one year of its current review.

However, in light of the complicated procedural history in this case, this Administrative Law Judge will apply the sequential analysis in the alternative.

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). It is also noted that claimant's ejection fraction does not meet the listing of impairments under set three of the sequential analysis despite claimant's primary physician's statement that claimant is disabled for the ejection fraction reason. Federal and state laws very strict with regards to definitions of disability and with regard to treatment of symptoms. While Claimant's ejection fraction is quite low, in order to meet a listing, it must be below 30. Claimant's current ejection fraction is not. This is in essence why SHRT indicated that the definition of disability is to be reserved to the Commissioners/State. The undersigned ALJ concurs with SHRT as the various specific definitions in the listing requires a 30% or less ejection fraction.

For the reasons state above, Claimant does not meet one of the listing of impairment. 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 of finding claimant not disabled pursuant to medical or Vocational Grid Rules 201.25/24 as a guide.

In reaching this conclusion, the *SIAS* case law plays a significant role with regards to Claimant's smoking and obesity.

It is noted that claimant's smoking and/or obesity are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th cir 1988) decision. In *SIAS*, the claimant was an obese, heavy smoker who

argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised claimant to reduce his body weight. The court said in part:

...The claimant's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The claimant admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the claimant in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, *supra*, p. 481.

In *SIAS*, the claimant was found not truly disabled because the secretary disregarded the consequences resulting from the claimant's unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and smoking. Issues related to these problems often result from life style choices. In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many life style behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling" see *SIAS*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fails to follow the recommended or prescribed treatment program.

Claimant's nicotine addiction and obesity are directly related to the types of issues examined under the *SIAS* case law. Claimant complains of shortness of breath; Claimant can treat this condition with abstinence from smoking and diet and exercise. Claimant complains of obesity related

aliments-Claimant can treat his obesity with diet and exercise. Moreover, under federal regulations and state law, failure to follow recommended treatment recommendations can result in denial of an individual's claims and/or closure at review. 20 CFR 416.930(b).

It is noted that under the grids, the law classifies Claimant as a very young individual at 44 years old. Claimant, with behavioral changes in his life style choices, can have many productive years of work in the future.

For these reasons, 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 as to the Department's closure of Claimant's MA-P and SDA cases at review as well as a legal assessment of Claimant's MA-P and SDA as a new application.

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: 3/29/13

Date Mailed: 4/1/13

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.

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- 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/pf

cc:

