

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201278243
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: January 29, 2013
County: Wayne County DHS #43

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 January 29, 2013. Claimant personally appeared and testified. Claimant was represented by [REDACTED]. Participants on behalf of Department of Human Services (DHS) included [REDACTED], ES.

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 August 8, 2012, Claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On September 12, 2012, the MRT denied.
4. On September 14, 2012, the DHS issued notice.
5. On September 19, 2012, Claimant filed a hearing request.
6. On October 30, 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 June 7, 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 [REDACTED] standing 5'10" tall and weighing 280 pounds. Under the BMI index Claimant is morbidly obese.
9. Claimant does have an alcohol/drug abuse problem and history. Claimant was not credible at the administrative hearing saying he did not know his weight or drug abuse problems. Claimant smokes. Claimant has a nicotine addiction.
10. Claimant has a [REDACTED] and can drive an automobile.
11. Claimant has [REDACTED]".
12. Claimant is not currently working. Claimant last worked approximately one year ago. Claimant has worked as a direct care worker. Claimant's work history is semi-skilled.
13. Claimant alleges disability on the basis of bi-polar disorder
14. The October 30, 2012 SHRT decision indicates an August 7, 2012 mental status exam indicates poor historian. Reports using a lot of alcohol. Reported using marijuana. Hygiene and grooming fair. Selectively mute. Diagnosis includes schizoaffective disorder, bipolar type, alcohol abuse, cannabis abuse by history, and rule out personality disorder. Denied as to the materiality of drug and alcohol abuse.
15. The June 7, 2013 subsequent SHRT decision heavily relies on the state DDS examiners assessment finding Claimant not disabled on not meeting listings or statutory disability. The state disability examiner does not find Claimant markedly limited in any of the mental residual functional capacity assessment criteria. Contrary assessment has been made on March 21, 2012 by Claimant's treating psychiatrist at community mental health which has Claimant markedly in six categories out of twenty; moderately limited in three out of twenty. Exhibits 18 and 19.
16. Claimant was not a credible witness and argumentative.

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).

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).

After careful review of the substantial and credible evidence of the whole record, this ALJ finds that Claimant meets or equals listing 12.04.

In reaching this conclusion, it is noted that the assessment by the state DDS examiner did not find disability, and did not find Claimant markedly limited in any category. It is further noted that the assessments by the state examiner who did a paper review is radically different from the Claimant's treating source. Claimant's treating physician finds Claimant markedly limited in 6 categories - listing level. Under federal regulations and state law, an applicant's treating source is to be given greater weight pursuant 20 CFR 416.919h. There is no indication that the treating source's assessment was conclusionary or an opinion; it is based upon the standard treatment of care within the profession and in in-person interview and patient contact.

It is noted that the medical evidence of record is replete with assessments of Claimant as demonstrated at the administrative hearing that he is a very immature individual who selectively focuses on his situation that is to his advantage and not taking responsibility. The drug and alcohol is not found to be material but will be an issue at review; Claimant's failure to continue or to refrain from alcohol and drug abuse will be considered at review and failure to refrain will be given great weight pursuant to the issues and considerations found at 20 CFR 416.930.

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 MA-P/SDA Programs. 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 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: 7/17/13

Date Mailed: 7/17/13

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:

