

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-8300

Issue No: 2009

[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, an in-person hearing was held on [REDACTED]. Claimant was represented by [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 [REDACTED] claimant applied for MA with the Michigan Department of Human Services (DHS).
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. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on [REDACTED] SHRT once again denied claimant. Due to additional medical being received, on [REDACTED], SHRT once again denied claimant.

7. Claimant has received a final determination on an SSI application with SSA, but alleges one of the exceptions. Jurisdiction is proper.
8. As of the date of application, claimant was a [REDACTED] standing 5'8" tall and weighing 260 pounds. Claimant's BMI under the body mass index is 39.5 classifying claimant as obese. Morbid obesity begins at 40.0. Claimant testified that this is a normal weight for her.
9. Claimant smokes approximately one pack of cigarettes per day. Claimant has a nicotine addiction. She does not have any alcohol or drug abuse problems or history.
10. Claimant does not have a driver's license due to being suspended for failure to pay driver responsibility fees.
11. Claimant is currently in college. Claimant is studying medical billing and coding at [REDACTED] and has five semesters left. Claimant hopes to secure sedentary work in her degree study area.
12. Claimant is not currently gainfully employed, but is a college student. Claimant was last gainfully employed in [REDACTED] when she worked as an assistant manager for approximately four months. Claimant has also worked as a telemarketer and indicated that these positions constitute the entirety of her work life.
13. Claimant alleges disability on the basis of bone infections, toe amputation, diabetes, arthritis and back pain.
14. The [REDACTED] SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

...admitted [REDACTED] with foot infection and gangrene/osteomyelitis of the fifth toe. She underwent amputation of the fifth toe. Liver functions were abnormal and her condition was improving. In [REDACTED] claimant was obese, but her examination was otherwise unremarkable. Denied per 20 CFR 416.909.
15. The subsequent [REDACTED] SHRT decision is adopted and incorporated by reference herein/to the following extent:

Psychological evaluation dated [REDACTED] shows cooperative, motivated and verbally responsive. She had good eye contact. Her thoughts were logical, organized, simple and concrete. Communication content was age appropriate and her mood was

euthymic. No apparent thought disorder and no apparent mood disorder. Her condition is treatable with therapy or medical interventions. Diagnoses included dysthymic disorder and panic disorder without agoraphobia. Denied per 202.21 as a guide.

16. The subsequent [REDACTED] SHRT decision is adopted and incorporated by reference herein/to the following extent:

...newly submitted evidence consists of office notes and visits for diabetes and foot ulceration. There is an ultrasound guided liver biopsy report. Psychiatric provided is not new and was already reviewed in the [REDACTED] SHRT reviewed. Analysis: office visits both routine, health was stable. X-rays showed no evidence of metatarsal fractures. The liver biopsy results were not provided. Denied per 201.21 as a guide.

17. A psychological evaluation dated [REDACTED] concludes:

...condition treatable with therapy or medical interventions. No impairment in patient's ability to understand and carry out simple directions. No impairment in ability to make judgments with simple work related decisions. No impairment in ability to understand, recall and carry out complex directions. No impairment in the ability to multi-task, sequence and process instructions. No impairment in ability to interact with public, supervisors and co-workers.

18. Claimant's medical file consists of a number of radiology reports which show no positive results and/or are essentially unremarkable and non-severe.
19. Claimant testified that she needs a shower chair to shower and that her pain level averages 7 out of 10. Claimant's testimony was not corroborated by the great bulk of the medical evidence.

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 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.

The first step of the analysis looks at whether an individual is engaged in substantial gainful activity (SGA). In this case, as noted in the findings of facts, claimant is a student at [REDACTED] medical billing and coding. The law and regulations will not find that an individual is not eligible for statutory disability where they are in a student status. However, it should be noted that the facts herein are such that claimant testified that she expects to find a sedentary position in her field of study which is medical billing and coding. While claimant is not technically engaged in a position which pays her wages, this ALJ will rule in the ambiguities in claimant's favor and continue the analysis. See 20 CFR 416.920(b).

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). SHRT denied claimant at one point due to duration. While it could be argued that claimant does not meet duration, 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.

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). Claimant does not have a significant work history. Claimant's entire work history was short lived as claimant worked four months plus six months. At the same time, claimant is a very young individual at 43 under the law. However, this ALJ will once again find that the ambiguities are great enough that the analysis could be continued by weighing the ambiguities in claimant's favor.

In this case, this ALJ finds that claimant cannot return to past relevant work on the grounds that the work is too sparse to constitute enough data to make an assessment as whether or not the claimant could return to past relevant work. Thus, the vocational grids will be used. However, it is noted that claimant's mental impairment does not move

beyond step 4 as claimant's mental impairment(s) clearly indicate that claimant is capable of work. See evaluation completed in [REDACTED].

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 in finding claimant not disabled pursuant to Medical Vocational Grid Rule 201.21 as a guide.

In reaching this conclusion, it is noted that claimant has had a number of radiology reports which do not find positive/or significant findings which meet severity as defined under federal and state law as to statutory disability.

Claimant's fracture of the toe and the osteomyelitis simply do not rise to statutory disability.

Claimant does have some significant symptoms which are affecting her lifestyle caused by her obesity and smoking; however, both of these can be treated with cessation, and/or diet and exercise.

Regarding claimant's complaints that her medical problems cause her pain which can rise to a 7 out of 10 on a chronic basis is not corroborated by the great bulk of the medical evidence pursuant to the requirements at 20 CFR 416.927, .928 and .929.

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/

[REDACTED]
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.

JGS/jk

cc:



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