

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

IN THE MATTER OF:



Reg. No.: 201252265
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 30, 2012
County: Lenawee

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 on October 30, 2012. Claimant was represented by Mr. H. Abraham, L&S Associates, Inc.

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 December 15, 2011, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA
3. On February 9, 2012, the MRT denied.
4. On February 15, 2012, the DHS issued notice.
5. On May 10, 2012, claimant filed a hearing request.
6. On July 5, 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 4, 2013 SHRT once again denied claimant.

7. Claimant has not applied for SSI with the Social Security Administration (SSA) due to claimant stated she has “excess income” and no work quarters for RSDI.
8. Claimant is a [REDACTED]-year-old female standing 5’3 tall and weighing 140 pounds.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes at least a pack of cigarettes a day and has done so for 30 years. Claimant has a nicotine addiction.
10. Claimant testified that she does not have a [REDACTED] as she never learned to drive.
11. Claimant testified that she has a [REDACTED] [REDACTED] education. Claimant further testified that she was never in special education. Claimant argued at the Administrative Hearing that she has a learning disability. No evidence of record exists to corroborate claimant’s statement. Claimant’s testimony is contrary – the claimant’s 49 from her treating physician indicated no “mental limitations.” Claimant’s testimony was not consistent with a learning disorder – claimant spends time on the computer playing games, with Ebay. Claimant is able to search for movies and download movies for viewing on her personal computer.
12. Claimant is not currently working. Claimant indicated she was a stay at home parent. Claimant’s youngest child is 31 years old.
13. Claimant alleges disability based on her representative’s hearing request stating: asthma, COPD, anemia, learning disability and hypertension.
14. The July 5, 2012 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

[REDACTED], September 21, 2011, page 24, consultation/history and physical: claimant presented to hospital for constant vaginal bleeding (spotting); normal examinations with the exception that noted for wheezing, relates that compliant with inhalers.

Analysis:

The medical evidence of record does not document the presence of a severely impairing condition what would prevent the performance of gainful activities.

Recommendation:

Denied for lack of severity per 20 CFR 416.921(a). Exhibit 51

15. The February 4, 2013 subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

Medical Summary:

newly presented

[REDACTED], January 13, 2012, page A3, [REDACTED]: normal examination; prescribed inhalers, as need use.

[REDACTED], January 23, 2012, page A6, [REDACTED]: normal post-operative (total hysterectomy) visit.

[REDACTED], April 13, 2012, page A9, [REDACTED] it: complains of abdominal bleeding – states has some yellowish vaginal discharge accompanied with some abdominal pain; normal examination.

Analysis:

The medical record of evidence continues to support that there is mild pulmonary issues that do not establish the presence of severe limitations. The totality of the evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities.

Recommendation:

Denied per 20 CFR 416.921(a).

16. Claimant testified at the Administrative Hearing that she is able engage in activities of daily living including laundry, dishes, dusting, meal preparation. Claimant further indicated that she does not need any assistance with bathroom and grooming needs.
17. Claimant complained at the Administrative Hearing that she must use an inhaler at night "about 6 times." Repeated medical indicates that despite claimant's wheezing and/or COPD issues, claimant has a 30 year nicotine addiction and continues to smoke. Claimant's has been repeated cautioned and advised to cease her tobacco addiction. Claimant has repeatedly declined a patch and indicates that she will not quit smoking unless her spouse does despite her COPD and inhalers. Other medical evidence indicates "possible asthma exacerbation. Patient encouraged to be compliant....encourage patient strongly to stop smoking, patient agreed...." Exhibit 25.
18. Claimant stipulated at the Administrative Hearing that her high blood pressure is controlled with medication.
19. Claimant's treating physician filled a 49 indicating that the claimant can sit about 6 hours out 8 hour workday and stand and/or for at least 2 hours.

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.

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). After careful review of the substantial and credible evidence on the whole record, the undersigned Administrative Law Judge concurs with SHRT in finding claimant's medical evidence does not meet severity based upon the issues and considerations found at 20 CFR 416.921(a).

SIAS v Secretary of Health and Human Services:

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).

It is also noted that claimant's failure to follow to the recommended treatment can cause issues regarding eligibility pursuant to the issues and considerations at 20 CFR 416.930.

It is also noted that claimant testified at the Administrative Hearing that her high blood pressure is controlled with medication. As to claimant's alleged impairments on her representative's hearing request, the evidence of record does not indicate that these meet severity as required under the law.

It is further noted that claimant's claims of being learning disabled are not reflected at all in the medical evidence. In fact, claimant's treating physician indicates that claimant has no mental impairments. Moreover, claimant's testimony with regards on how she spends her days reflects that she is quite skilled on her personal computer.

In addition, there is no indication that claimant has any problems with engaging in her activities of daily living as would be anticipated for one to show statutory disability is not shown. Denied per 20 CFR 416.921(a).

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/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 18, 2013
Date Mailed: March 19, 2013

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/tb

cc:

