

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

IN THE MATTER OF:



Reg. No.: 201272004
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 6, 2012
County: Kalamazoo

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 December 6, 2012.

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 1/9/12, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On 8/14/12, the MRT denied.
4. On 8/16/12, the DHS issued notice.
5. On 8/16/12, claimant filed a hearing request.
6. On 10/10/12, 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 2/4/13 SHRT once again denied Claimant.

7. Claimant testified that she does have an application pending for SSI with Social Security Administration (SSA).
8. Claimant is a [REDACTED]-year-old female standing 5'2 and weighing 239 pounds. Claimant's BMI under the body mass index classifies Claimant as morbidly obese at 43.7.
9. Claimant does not have an alcohol, drug problem or history. Claimant does not smoke.
10. Claimant has a [REDACTED], but testified she does not drive due to her legs and back hurting.
11. Claimant has a [REDACTED] grade [REDACTED]
12. Claimant is not currently working. Claimant indicates she last worked in 2010 as a choir provider. Claimant's history is medium, exertional, semi-skilled employment.
13. Claimant alleges disability on the basis of back pain, high cholesterol, diabetes, neuropathy.
14. The 10/10/12SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

8/16/2012, page 42, US: normal right lower extremity, negative for deep venous thrombus (DVT).

Michigan Medical Consultants, 6/15/2012, page 77, independent examination: complains of diabetes, DVT, left knee injury and high cholesterol; uses cane for pain control; no current medical treatment; tender left knee, lateral compartment; grip strength/dexterity intact; mild difficulty on/off examination table; refused to perform heel/tow walk; moderate difficulty squatting; unable to hop or stand either foot; negative straight leg raises; reduced ranges of motion lumbrosacral extension, lateral flexion and bilateral knees.

Analysis:

The medical evidence supports that the Claimant would reasonably retain the ability to perform medium exertional tasks. While the Claimant has poorly

controlled diabetes with no current medical treatment, there is no evidence of end-organ damage.

Recommendation:

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

15. The 2/4/13 subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

Medical Summary:

Newly submitted evidence

The physical examination on 9/7/12 reported her blood pressure as 115/70. Her lungs were clear and heart with normal limits. There was tenderness to the lumbar spine. Muscle strength was normal in the lower extremities. She has diminished light touch sensation in the right foot and right knee jerk. Her diabetes is not well controlled.

Analysis:

The Claimant's blood pressure is well controlled. Lungs are clear and heart within normal limits. She had tenderness to the lumbar spine. Muscle strength in the lower extremities was normal. There was diminished sensation in the right foot and right knee. The diabetes is not controlled and there is no evidence of end organ damage. As a result of the Claimant's physical condition, she is restricted to performing medium work. She retains the capacity to lift up to 50 pounds occasionally, 25 pounds frequently and stand and walk for up to 6 of 8 hours.

Recommendation:

Denied per 203.29 as a guide

16. Claimant submitted as new medical evidence a form completed by a physician's assistant which was drawn up by her attorney. It is unclear if the attorney is assisting Claimant in an SSI claim or otherwise. The form was completed by a physician's assistant.
17. Claimant testified at the administrative hearing that she is highly restricted in her activities of daily living with regards to meal preparation, dusting, dishes, laundry, and including her bathroom and grooming needs. Claimant testified that her husband does "most of that" and assists her

with bathroom and grooming needs. Claimant's DHS-49G indicates that her husband does many activities in the household. Claimant's husband collects retirement disability.

18. The DHS-49B indicates "no signs of difficulty."
19. The Michigan DDS evaluation concludes no findings of neuropathy although some weakness in the right leg due to pain in the knee associated with tenderness over lateral compartment. The physician notes "she may have sustained a meniscus tear." Claimant is not a surgical candidate with regards to the knee pain. The physician further notes that Claimant's sugars are poorly controlled; she is not on treatment.
20. Claimant testified that she could not lose weight due to her diabetes.

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). 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).

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 medical vocational grid rule 203.29 as a guide.

In reaching this conclusion, it is noted that Claimant's obesity strongly reflects the issues and considerations in:

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.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

It is further noted that pursuant to 20 CFR 416.912(c), Claimant has the burden of proof. The evidence, taken as a whole, does not support the severe restrictions of Claimant's activities of daily living pursuant to the issues and considerations required under the federal regulations 20 CFR 416.913(b), .913(d), and .913(e).

It is also noted that a physician's assistant is not given as much weight as a physician.

It is also noted that Claimant is not on treatment for her "sugars."

Claimant has significant problems due to her large body habitus. Moreover, Claimant's related conditions are highly correlated with issues caused by her obesity. Much of Claimant's alleged medical issues are treatable with diet and exercise, see 20 CFR 416.930.

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.

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: 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/tb

cc:

