

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

IN THE MATTER OF:



Reg. No.: 201272785
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 11, 2012
County: Huron

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 11, 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 6/20/12, Claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for one month of retro MA.
3. On 8/6/12, the MRT denied.
4. On 8/9/12, the DHS issued notice.
5. On 8/22/12, Claimant filed a hearing request.
6. On 10/29/12, 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 2/20/13 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 female standing 5'6 and weighing 150 pounds.
9. Claimant has an alcohol/drug abuse problem or history. Claimant smokes. Claimant has a nicotine addiction.
10. Claimant does not have a [REDACTED] [REDACTED]
11. Claimant has [REDACTED] [REDACTED] [REDACTED]
12. Claimant is not currently working. Claimant's work history is light exertional, semi-skilled employment.
13. Claimant alleges disability on the basis of spinal fracture, rib fracture and neuropathy. Claimant's medical evidence from the all-terrain (ATV) accident which caused the fracture includes diagnoses of depression.
14. The 10/29/12 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

5-28/12-6/8/12, [REDACTED] Hospitalization and discharge indicates suicide attempt in an ATV accident. Blood alcohol content .24%. CT notes normal cervical and lumbar findings; transverse fractures to T9 and T10 facet joints with superior endplate compression fracture T10.

6/4/12, [REDACTED] per page 45 consultation, indicates depression and alcohol abuse; Medication non-compliant for the past 10 months for unknown reasons; heavy alcohol consumption; ATV accident was suicide attempt.

Drug and alcohol abuse present but not material. Duration for the fractures is not met.

Recommendation:

Denied per 20 CFR 416.920(e&g), and vocational grid rule 202.17.

15. The 2/20/13 subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

New Medical:

6/20/12 physical exam, Exhibit 13-14, indicate extremities and neurological findings normal. Diagnosed with thoracic pain, fracture, hypertension, hepatitis C, depression, and anxiety.

6/20/12 mental status exam, diagnosed with major depressive disorder and alcohol abuse. Admitted to the hospital under involuntary status. Medication was restarted.

Analysis:

Involved in an ATV accident and sustained thoracic spinal fracture. She has residual pain, but the objective exam was within normal limits. Reported this accident was a suicide attempt. Treated for depression and alcohol abuse. History of noncompliance. With treatment and medication, she retains the capacity to perform light, unskilled work. Drug and alcohol abuse involved but not material to this determination based on the evidence.

16. [REDACTED] - [REDACTED] behavioral services evaluation of 6/9/12 indicates smoking one pack per day and drinking excessively recently.
17. A [REDACTED] evaluation indicates that during the interview patient appeared engaged and did not endorse any suicidal thoughts. Also denied being depressed or having mood swings. Exhibit 15.

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, this ALJ finds that the medical evidence of record does not support finding that Claimant's ATV fractures meet the duration requirements. There is no evidence to indicate that Claimant would not recover from her fractures within the standard, expected medical timeframe. While the medical literature in general would indicate that Claimant's smoking would delay healing, as such, this is a behavioral driven behavior which can be treated with abstinence from smoking. Even so, there is no indication that in combination with the fracture, Claimant's nicotine addiction would thrust this case beyond the durational requirement.

With regards to Claimant's remaining alleged impairments, there is no evidence to indicate that they are severe. Claimant's depression was not exhibited in an interview or displayed. Even if it were, Claimant's failure to continue on her medications would trigger a failure to follow the recommended treatment federal regulations found at 20 CFR 416.930. Claimant has no good cause. Medical evidence indicates that Claimant admitted that she stopped taking her medication for no reason. Claimant was restarted on her medications at the hospital. See Exhibit 45.

As to the neuropathy, there is indication that the neuropathy is statutory disabling as required by the statutory disability definition found at 20 CFR 416.920.

For these reasons, for the reasons stated above, statutory disability is not shown.

It is noted in the alternative that should the sequential analysis proceed, the finding of not disabled would be require pursuant to the SHRT analysis found in both of it decisions under the medical vocational grid.

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: 4/19/13

Date Mailed: 4/23/13

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:

