

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

IN THE MATTER OF:

[REDACTED]

Reg. No: [REDACTED]
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 21, 2012
Van Buren County DHS

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 November 21, 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 June 18, 2012, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On August 3, 2012, the MRT denied.
4. On August 10, 2012, the DHS issued notice.
5. On August 20, 2012, claimant filed a hearing request.
6. On October 16, 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 January 25, 2013 SHRT once again denied claimant.

7. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a 47-year-old female standing 5'8" tall and weighing 238 pounds. Claimant's BMI is 36.2 classifying as obese under the body mass index.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has some community college studies.
12. Claimant is not currently working. Claimant last worked on March 31, 2012 as a rural route carrier. Claimant indicated that she earned [REDACTED] to [REDACTED] per year doing this work. On the DHS forms, claimant left her work history blank. SHRT indicates that the evidence in the case that claimant has a semi-skilled work history.
13. Claimant alleges disability on the basis of left-sided weakness, abdominal pain, and acute porphyria.
14. The October 16, 2012 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

MEDICAL SUMMARY: An MRI of the thoracic spine on 6/29/12 showed mild multilevel degenerative changes (page 34). The MRI of the brain on 6/1/12 was normal (page 37). The MRI of the cervical spine on showed lateral recess and partially intraforaminal disc extrusion at the C5-C6 level. This is likely compressing the left C6 nerve root (page 38). The electromyogram showed a median entrapment at the bilateral wrists, worse on the left (page 41).

The physical examination on 8/25/12 reported she weighed 228.5 pounds and height 5 feet 6 inches tall. The abdomen area was normal. She was slightly limited in range of motion on the right shoulder. Her motor strength and function was normal. She had normal sensation of the upper and lower extremity. Her grip strength was mildly diminished and dexterity was normal. She ambulates with a wide based gait. Her lungs were clear ([REDACTED] medical records).

ANALYSIS: Despite the MRI of the thoracic and lumbar spine showing mild degenerate changes and the MRI of the cervical showing a disc extrusion, she is slightly limited in range of motion of the right shoulder. The electromyogram showed median entrapment at the bilateral wrist, worse on the left. The physical examination had a mild grip strength loss and normal dexterity. She ambulated with a wide based gait. Lungs were clear. She's able to maintain weight with a body mass index of 36.9. As a result of the claimant combination of severe physical condition, she is restricted to performing sedentary work. She retains the capacity to lift up to 10 pounds frequently and stand and walk for up to 2 of 8 hours.

RECOMMENDATION: Denied per 201.21 as a guide.

15. The subsequent January 25, 2013 SHRT decision is adopted and incorporated by reference herein/to the following extent:

NEW MEDICAL: 11/2012 letter from claimant's treating physician noting claimant has significant weakness and the exam conducted in August 2012 by an examining source did not accurately document or assess her weakness.

ANALYSIS: The newly supplied evidence includes an opinion from the claimant's treating physician; however, the opinion is not substantiated by objective evidence. The physical exams file note a history of carpal tunnel, but normal dexterity despite reduced grip and strength in the upper extremities. Claimant retains the capacity to perform sedentary work.

RECOMMENDATION: Denied per 202.20 as a guide.

16. On June 29, 2012, an MRI of the thoracic spine concluded mild multilevel degenerative changes resulting in no spinal canal stenosis or nerve root compression. Normal thecal cord caliber and signal intensity. (Exhibit 33)
17. A June 29, 2012 MRI of the lumbar spine indicates normal for age—mild degenerative changes. No spinal canal stenosis or nerve root compression.
18. An MRI of the cervical spine on June 1, 2012 concluded mild and moderate disc degeneration. There were a number of normal findings.
19. Nuclear medicine evaluation scanned on April 17, 2012 concluded normal hepatobiliary scan including normal gall bladder ejection fraction.

20. Claimant's treating physician who wrote the note without any medical diagnoses as part of the new medical had previously completed a DHS 49 on June 20, 2012 which indicates claimant has a history of "weakness and abdominal pain." Claimant's diagnosis: neuropathy, proximal weakness, episodic abdominal crisis.
21. Claimant testified repeatedly at the administrative hearing that she had porphyria. Upon questioning, claimant indicated that her blood test was negative.
22. Claimant testified at the administrative hearing that she cannot engage in any activities of daily living. Claimant's testimony was not corroborated by medical diagnoses.
23. The November 19, 2012 letter from claimant's physician lacks any objective medical diagnoses, lab tests, evidence. The physician opines that the treating doctors did not fully assess that claimant is extremely weak and has been "robbed much of her strength."

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 addiction 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 in finding claimant not disabled pursuant to the issues and considerations at Medical Vocational Grid Rule 202.20 as a guide.

In reaching this conclusion, it is noted that claimant has had a number of radiology reports which are outlined in the Finding of Facts which conclude mild to moderate changes, or no significant findings at all. These radiology reports do not indicate that claimant has any significant findings other than normal aging. In fact, one report specifically states normal for claimant's age.

Normal aging is not considered as statutorily disabling under federal and state law for the program for which claimant is applying.

Regarding claimant's claims of porphyria, there is no evidence to indicate that this is a diagnosis and/or that this is disabling. In fact, despite claimant's testimony alleging this condition is to be disabling, at the administrative hearing, claimant indicated that her blood work for the porphyria was negative.

Claimant also complained at the administrative hearing that she could only read at the sixth grade level and was having difficulty understanding the medical. However, claimant not only has a high school diploma, but attended community college. More importantly, there is no medical evidence in the file to indicate claimant has any learning disability, or learning impairment which affects her ability to engage in work or work-like settings.

Claimant complained extensively that she was unable to engage in many activities of daily living. However, claimant's complaints are not corroborated by the great bulk of the medical evidence pursuant to the issues and considerations at 20 CFR 416.913.

With regards to claimant's treating physician's statement, as noted by SHRT and this Administrative Law Judge, the statement regarding claimant having significant weakness and being "robbed of much of her strength" lacks medical diagnoses and corresponding medical evidence as required under federal and state law. Thus, under the federal regulations, claimant's treating physician's statement is considered conclusory pursuant to the issues and considerations under 20 CFR 416.927. Those statements cannot be given any significant weight as they are not medical evidence. This Administrative Law Judge notes that there is a 49 completed by claimant's treating physician which indicates that claimant has a history of weakness and abdominal pain, and a diagnosis of neuropathy, proximal weakness, and episodic abdominal crisis. These three are not documented in the medical evidence as interfering with claimant's ability to engage in work or work-like settings. As such, they are vague and ambiguous with regards to work function and capacity.

Regarding claimant's obesity, as already noted, obesity is not recognized as statutorily disabling. Claimant obviously has a good appetite and is able to maintain a high weight and function accordingly.

Claimant also complained at the administrative hearing regarding reduced grip strength. However, the exam in claimant's file indicates normal dexterity despite the reduced grip and strength in the upper extremities.

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).

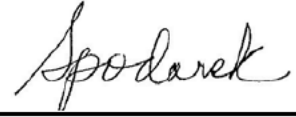
Claimant has the burden of proof. Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

For these reasons, and 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.



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

Date Signed: March 1, 2013

Date Mailed: March 4, 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/db

cc:

