

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

IN THE MATTER OF:



Reg. No.: 201273943
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: December 12, 2012
County: Bay

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 12, 2012.

ISSUE

Did the Department of Human Services (DHS) properly deny Claimant's Medical Assistance (MA) and State Disability Assistance (SDA) 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 4/2/12, Claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On 8/15/12, the MRT denied.
4. On 8/20/12, the DHS issued notice.
5. On 8/31/12, Claimant filed a hearing request.
6. On 10/15/12, 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 3/8/13 SHRT once again denied Claimant.

7. Claimant testified that she has an SSI application pending with the Social Security Administration (SSA). An SOLQ from the SSA does not show any application pending as of 4/2/13.
8. Claimant testified she is a [REDACTED]-year-old [REDACTED] standing 4'11 and 100 weighing pounds.
9. Claimant does not have an alcohol/drug abuse or smoking problem or history.
10. Claimant has a [REDACTED] and can drive an [REDACTED]
11. Claimant has a [REDACTED]. Claimant did not take the [REDACTED] and is not licensed. Claimant has worked as an [REDACTED].
12. Claimant is not currently working. Claimant last worked at a legal aid group in [REDACTED] as an [REDACTED]. Claimant separated in 3/09 when she returned home to take care of her [REDACTED]. Claimant still resides in his house. Claimant lists work history as also including working as an [REDACTED]. Claimant also worked in document control for 6 years at [REDACTED].
13. Claimant alleges disability on the basis of arthritis, degenerative disc disease (DDD), asthma, depression and anxiety. Claimant lists her back problems as having an onset date of 38 years ago (herniated discs); depression 1988; anxiety 8 months ago; arthritis 22 years; fatigue 20 years; asthma 2005. Exhibit 12.
14. The 10/15/12 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

4/12 DHS-49 normal exam. 6/12 psychological exam alleging depression, anxiety. Claimant reports having friends and managing daily activities independently. Fully oriented, memory intact, cognitive function normal. She was diagnosed with major depressive disorder....

Analysis:

History of asthma, DDD, depression, anxiety. Physical exams within normal limits. Mental exams indicates moderate limitations. Retains the capacity to perform light, unskilled work.

Recommendation:

Denied per medical vocational grid rule 202.13 as guide.

15. The 3/813 subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

Newly presented

████████████████████, 8/13/12 evaluation: major depression, rule out post traumatic stress disorder. 11/19/12 medication review: upset over disability denial, states doing better with medication changes. 5/31/11 page A-19, MRI: herniated disc C5-7, normal thoracic spine. ***Denied per 20 CFR 416.920(e&g), medical vocational grid rule 202.13 as guide.

16. Claimant attacked the credibility of her physical exams by her treating physicians which indicates normal evaluations by stating that at that same time, her physician was prescribing pain meds for her.
17. Claimant complains of chronic pain. Claimant has had injections. Per new evaluation, Claimant evidently has seen a neurosurgeon. No indication that Claimant is in need of surgery. ██████████, rheumatology, internal medicine, recommends exercise, physical therapy. Dr. Howland indicates Claimant has "LBP." ██████████ also indicates that the neurosurgeon told Claimant that her right arm numbness is in the pattern of carpal tunnel syndrome.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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 disagrees with the SHRT that Claimant is not disabled pursuant to medical vocational grid rule 202.13 as guide. Claimant's complaints of DDD would prohibit her from doing light work. However, as Claimant has a law degree, Claimant is capable of performing work under the issues and recommendations found at medical vocational grid rule 201.15 as a guide.

In reaching this conclusion, it is noted that Claimant indicates that she has [REDACTED] for almost 30 years with her back pain. Nevertheless, Claimant has done numerous jobs for the last 28 years.

It is also noted that Claimant separated from her job as an [REDACTED] in [REDACTED] not because she could no longer do it or was released but to return to a step [REDACTED] [REDACTED] to reside with her [REDACTED] until he passed.

Regarding Claimant's attacks of the credible of the information found on the DHS-49, the undersigned ALJ has taken it into consideration and does not find that it is significant or would change the outcome of the decision herein.

Claimant's most severe problem seems to be her anxiety and depression. However, the law requires a showing that any alleged impairment is more than just severe – there must be medical evidence to show that the impairment or impairments interfere with an individual's ability to engage work or work like settings.

Claimant has the burden of proof from Step 1 to Step 4. 20CFR 416.912(c). 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.

The undersigned ALJ has reviewed the bulk of the medical evidence and the testimony herein, and finds that the evidence does not point towards finding statutory disability as it is defined under Federal and State law and thus, the DHS denial must be UPHELD.

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: 5/7/13

Date Mailed: 5/10/13

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

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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:

