

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

IN THE MATTER OF:



Reg. No: 20133951
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 24, 2013
Muskegon 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 January 24, 2013.

ISSUES

1. Did the Department of Human Services (DHS) properly deny Claimant's Medical Assistance (MA) application?
2. Did the DHS properly propose to close Claimant's State Disability Assistance (SDA) at review?

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 4/22/2011, MRT processed a request by Claimant for SDA pursuant to a 3/14/2011 application. MRT approved Claimant for SDA and requested a review for September, 2011. On 6/12/2012, Claimant applied for MA-P. At that time, the DHS realized that it failed to review Claimant's SDA. The issue herein is Claimant's MA-P application denial and SDA review.
2. Claimant did not apply for retro MA.
3. On 9/18/2012, the MRT denied. On 9/25/12, the DHS issued notice of the MA-P denial and issued notice of the SDA proposed closure.
4. On 10/1/12, Claimant filed a timely hearing request. The DHS reinstated the SDA pending the outcome of the hearing.

5. On 10/1/12, the State Hearing Review Team (SHRT) denied claimant.
6. Claimant has an SSI application pending with the Social Security Administration (SSA).
7. As of the date of review, Claimant is a [REDACTED]-year-old male who testified that he does not know his height and weight. Medical evidence indicates that Claimant is approximately [REDACTED]'9" and weighs about 170 pounds.
8. Claimant testified that he does not have an alcohol/drug abuse problem. In response to the question as to whether Claimant has a history, Claimant responded "I have no idea." Claimant smokes. Claimant has a nicotine addiction.
9. Claimant does not have a [REDACTED], testifying that he lost it.
10. Claimant has a [REDACTED]
11. Claimant is not currently working. Claimant testified that he was incarcerated for sixteen years. Claimant testified that he worked while incarcerated in manual labor.
12. Claimant alleges disability on the basis of depression.
14. The 12/13/2012 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

The mental status on 8/15/12 noted the Claimant was in contact with reality. He was alert and fully oriented. His speech was clear, coherent, and fluent. His thought process was relevant, logical, and concrete. He had depressed affect. Exhibits 105-109.

Analysis:

The medical evidence shows that he may be depressed at times. He is still able to remember, understand, and communicate with others. As a result of the Claimant's severe mental condition, he is restricted to performing unskilled work.

Recommended Decision:

Denied per Medical Vocational Rule 204.00 as a guide.

15. On 4/9/2011, [REDACTED] conducted a psychological evaluation concluding that Claimant meets listing 12.04 as essentially Claimant would be exacerbated work-like setting. Exhibits 57-62. This evidently was the report upon which the 4/22/2011 MRT approval for SDA was based.
16. On 8/15/2012, [REDACTED] conducted a new evaluation concluding that Claimant can become gainfully employed in simple, unskilled work situations on a sustained and competitive basis, although guarded. Claimant appeared to have no difficulty understanding, remembering, and following through with simple instruction and there appears to be few restrictions to claimant's ability to perform simple, repetitive, concrete tasks. Exhibits 105-109.
17. On 8/15/2012, [REDACTED] completed a DHS-49E finding that Claimant was not markedly limited in any of the twenty categories. [REDACTED] report does not indicate that Claimant meets listing 12.04. Exhibits 103-104.
18. Claimant lives with his [REDACTED] and Claimant's [REDACTED] [REDACTED] ages [REDACTED] through [REDACTED]. Testimony by Claimant and Claimant's witness was to the effect that Claimant sits and stares for hours, does not do any activities of daily living, does not engage with the [REDACTED] and does not assist around the house; Claimant's [REDACTED] evidently is self-employed, pays for most of the expenses, and does all of the housework.
19. Claimant's condition has improved since the original SDA/MRT approval as evidenced by exhibits 57-62, 105-109, and 103-104.
20. Claimant was a difficult witness and a poor historian at the administrative hearing.

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 (department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 administers the SDA

program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and 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.

Federal regulations and state law are quite specific with regard to review and review standards. Under the law, the burden is on the department to show that the condition has improved and that the improvement is related to the ability to engage in work or work-like settings. These regulations specifically state:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering

at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s)

present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

The undersigned Administrative Law Judge has reviewed the great bulk of the medical evidence herein, and finds that the initial 4/22/2011 approval by MRT was based in large part on the 4/9/2011 evaluation by Dr. Mulder. That evaluation essentially states that claimant is disabled under listing 12.04. See Exhibits 57-62.

At review, current medical evidence includes a new and current evaluation by [REDACTED]. That evaluation essentially concludes that claimant is capable of working. See Exhibits 106 and 107. Moreover, this evaluation is further corroborated by a mental residual function capacity assessment (DHS-49E). There are no markedly limited categories checked off; Claimant no longer meets listing 12.04.

As [REDACTED] was the same evaluator in the 2011 and 2012 evaluations, these findings by [REDACTED] are considered highly reliable and valid.

Under the above-cited federal authority and state policy, this Administrative Law Judge finds that the first two prongs of the review assessment have been - Claimant has improved and that improvement is related to his ability to work.

The final five steps are essentially the five steps of the sequential analysis. Thus, for the remainder of the decision, the undersigned Administrative Law Judge will apply the five steps to establish whether claimant meets the eligibility criteria for both the MA and SDA programs.

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 in finding claimant not disabled pursuant to Medical Vocational Rule 204.00.

In reaching this conclusion, it is noted that the current evaluation by Dr. Mulder – both the narrative psychological evaluation as well as the mental residual functional capacity evaluation completed in August, 2012 – concludes that claimant is capable of working in an unskilled, simple and repetitive position:

“...the patient appeared to have no difficulty understanding, remembering, and following through with simple instructions, and there appears to be few restrictions to his ability to perform simple, repetitive, concrete tasks.” Exhibits 103-109.

It is noted that the medical evidence, taken as a whole, simply does not support the testimony that claimant does not function at all and sits and stares endlessly. The undersigned Administrative Law Judge is required under law to corroborate the medical evidence with the testimony pursuant to the issues and requirements at 20 CFR 416.913. These cannot be reconciled. The medical evidence, as it stands, creates a very high burden for an individual who is only 45 years old. Under the federal definition of statutory disability and the state policy, claimant is no longer eligible for continuing SDA and is not eligible for MA-P or SDA under the federal definition and state policy. Thus, this Administrative Law Judge must uphold the department’s denial.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides:

1. The DHS correctly denied claimant’s MA-P application
2. The DHS correctly proposes to close claimant’s SDA at review.

According, the DHS actions on both issues are both UPHELD, it is so ORDERED.

/s/

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

Date Signed: 3/28/13

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/pf

cc:

