

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-5134
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 30, 2013
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 30, 2013. Claimant appeared and provided testimony. The department witness was [REDACTED]. During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 7, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

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 July 27, 2012, claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On September 18, 2012, the MRT denied.
4. On September 24, 2012, the DHS issued notice.
5. On October 2, 2012, claimant filed a hearing request.
6. Claimant testified that he currently has an appeal pending before the Social Security Administration (SSA).

7. On November 27, 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 April 7, 2012 SHRT once again denied claimant.
8. As of the date of hearing, claimant was a 37-year-old male standing 6'0" tall and weighing 212 pounds. Claimant has a high school education and is able to read and write.
9. Claimant does not have any self reported alcohol/drug abuse problems or history. Claimant reported that he does not smoke cigarettes.
10. Claimant has a driver's license and testified that he can drive short distances.
11. Claimant is not currently working. Claimant last worked in July of 2011 as a cook and dishwasher, which he did for five years. Claimant reported that his work history has been as a cook or dishwasher on and off since 1996.
12. Claimant alleges disability on the basis of lumbar disc disease.
13. June 15, 2012 and July 18, 2012 appointments found the claimant to complain of back pain that had occurred for seven years. He described some numbness and tingling going down his left leg. Physical examinations found 5/5 normal muscle strength, 2/2 normal reflexes, no impairment of walking on toes or impairment of walking on heels and a normal gait. Straight leg raise was positive and there was tenderness over the lumbar vertebra and the sacral vertebra. No paraspinal muscle spasm. Claimant was started on Lyrica.
14. A June 29, 2012 MRI found a herniated nucleus pulposus at L5 – S1 on the left with extruded fragment into the left neural foramen with impingement of the exiting nerve root on the left. There was associated central canal, lateral recess and left neural foraminal stenosis at L5 – S1. At L4 – L5 there was circumferential bulging of the disc without herniation with associated mild central canal and bilateral neural foraminal stenosis. There was also right sacral ileitis.
15. A September 19, 2012 physical examination found back pain, decreased range of motion, muscle pain, but no muscle weakness. The claimant had normal neurologic function. His motor strength was 5/5. His reflexes were 2/2. There was no impairment of walking on heel or toes and his gait was normal. There was no swelling and his straight leg raise was negative. There was tenderness over the lumbar vertebra and sacral vertebra. No muscle spasms.
16. On October 3, 2012, the claimant's PA-C wrote a letter indicating that she supported his decision to apply for disability and thought it would be difficult for him to sustain gainful employment.

17. An October 30, 2012 independent psychiatric/psychological examination was conducted. The claimant reported that he can no longer work due to his back. He reported that he can't lift more than 15 – 20 pounds. The claimant reported that he had been using Lyrica for four months and that it was working good (sic). The claimant was felt to exaggerate his symptoms. He moved easily in his chair and there was no indication of pain and/or discomfort.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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 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 physician's 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 an 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).

Applying the sequential analysis herein, claimant is not eligible 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). Listing 1.04 "Disorders of the Spine" indicates that a herniated nucleus pulposus resulting in the compromise of a nerve root or the spinal cord with neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight leg raising test (sitting and supine) meets the listing. While the claimant does have a herniated nucleus pulposus impinging on the nerve root, there was no neurological deficits, no evidence of sensory loss (no EMG testing in the file), reflexes were consistently 2/2 and there was no muscle weakness or atrophy as muscle strength was 5/5. Therefore, claimant is not found to meet listing 1.04. 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). The Dictionary of Occupational Titles lists both cook and dishwasher as medium in exertional level. This Administrative Law Judge finds that the claimant is unable to return to work that is medium in exertional level. Claimant would be found capable of light exertional jobs that are simple and repetitive in nature. Therefore, the analysis will continue to the final step.

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 conclusion that claimant does not meet statutory disability on the basis of Medical Vocational Grid Rule 202.20 as a guide.

As noted above, claimant has the burden of proof pursuant to 20 CFR 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.

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**.

Suzanne
Administrative

/s/
L. Morris
Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 2, 2013

Date Mailed: July 2, 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.

SLM/hj

cc:

