

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20137790
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 27, 2013
County: Genesee 02

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, an in-person hearing was held on February 27, 2013. Claimant was represented at the administrative hearing by [REDACTED], [REDACTED] with [REDACTED]. Participants on behalf of the Department of Human Services (DHS) were: [REDACTED], APS.

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. Claimant was previously on caretaker relative MA due to a step child in the home whose parent was on SSI. That individual turned [REDACTED] triggering an ex parte review on behalf of Claimant. The DHS classifies 7/612 as the MA application date at issue herein with the Michigan Department of Human Services (DHS).
2. There is no retro MA issue herein.
3. On 10/11/12, the MRT denied.
4. On 10/16/12, the DHS issued notice.

5. On 10/23/12, Claimant filed a timely hearing request. The DHS failed to reinstate the action pending the outcome of the hearing. The DHS indicated that a Michigan [REDACTED] became involved and instructed the DHS to immediately to reinstate the case. No [REDACTED] was present at the administrative hearing.
6. On 1/7/13, the State Hearing Review Team (SHRT) denied Claimant. At the administrative hearing, Claimant's representative requested that the record be held open for the submission of over 100 pages of new medical evidence. The undersigned Administrative Law Judge (ALJ) denied on the basis of relevancy as neither Claimant nor his representative knew whether or not there were any duplicates in the file from the evidentiary packet. The record was held opened to give the representative an opportunity to review the medicals. Pursuant subsequent communication, the representative contacted the DHS and indicated that there would be no new medical evidence submitted herein. The record closed.
7. Claimant has been denied SSI with the Social Security Administration (SSA). Claimant testified that he has applied a number of times during the last 5 years. Claimant's most recent denial by an ALJ was on 1/24/11. Claimant appealed to the Appeals Council and was denied on 7/6/12. Claimant's representative alleges worsening conditions. Claimant has again subsequently reapplied and been denied. Claimant has appealed again.
8. Claimant is a [REDACTED]-year-old [REDACTED] standing 5'8 and weighing 230 pounds. Claimant's body mass index is 35 classifying Claimant as obese
9. Claimant does not have a current alcohol/drug abuse problem or history. Claimant testified that he has a history approximately 6 years ago. At application, Claimant was smoking 2 packs per day. Claimant has a nicotine addiction.
10. Claimant has a [REDACTED] and can [REDACTED] an [REDACTED]
11. Claimant has an [REDACTED] [REDACTED].
12. Claimant is not currently working. Claimant last worked in 2008. Claimant's work history is medium exertional, semi-skilled employment. Claimant testified "my [REDACTED] supports us." Claimant's [REDACTED] collects SSI.
13. Claimant alleges disability secondary to degenerative disc disease (DDD), chronic obstructive pulmonary disease (COPD), asthma, obstructive sleep apnea (OSA), coronary artery disease (CAD), hypertension, gastroesophageal reflux disorder (GERD) and anxiety.

15. A Michigan Department of Career Development, MRS vocational report dated 11/20/07 states in part that there was significant discrepancy between verbal and performance skills and thus the performance IQ is better measure of Claimant's ability which fell in the average range. The report also indicates that Claimant would be able to perform most of the manual labor type of jobs. Exhibit 65.
16. Claimant's medical evidence is replete with diagnoses of obesity and nicotine/smoking related medical issues in many assessments and recommendations repeated for Claimant to discontinue cigarette smoking, and change his diet and exercise.
17. A Michigan DDS psychological report done on 11/9/12 concludes that Claimant is capable of understanding, attending too, remembering, and carrying out instructions related to unskilled work related behaviors. Claimant is also evaluated in the opinion is that Claimant is capable of responding appropriately to co-workers and supervision and to adapt to change and stress in the workplace which is not marketable impaired.
18. Claimant testified at the administrative hearing that he is capable in engaging in many activities of daily living including meal preparation, dusting, dishes, laundry, etc. Claimant does not need any assistance with his bathroom and grooming needs.
19. Claimant was an [REDACTED].
20. Claimant complained of having to have a CPAC machine, using inhalers, and becoming short of breath easily. Claimant continues to smoke.

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). 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 in finding Claimant not disabled pursuant to 20 CFR 416.920(e&g), 202.17 as a guide.

In reaching this conclusion, it is noted that Claimant has the burden of proof:

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.

It is further noted that Claimant has many obesity and smoking related medical issues that can be treated with diet, exercise, and abstinence. These include smoking, asthma, obesity, diabetes, COPD, sleep apnea, hypertension, and GERD.

It is noted that claimant's smoking and/or obesity are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th cir 1988) decision. In *SIAS*, the claimant was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised claimant to reduce his body weight. The court said in part:

...The claimant's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The claimant admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the claimant in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

In *SIAS*, the claimant was found not truly disabled because the secretary disregarded the consequences resulting from the claimant's unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and smoking. Issues related to these problems often result from life style choices. In

addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many life style behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling" see SIAS. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fails to follow the recommended or prescribed treatment program.

The medical evidence also indicates that both Claimant's 2007 as well as current mental status evaluation indicates that Claimant can work.

It is also noted that Claimant essentially testified that he is capable of engaging in many activities of daily living.

Claimant has repeatedly advised to exercise, diet, and cease smoking. Under the medical vocational grids, Claimant is classified as a very young individual. Eventually, if Claimant continues in these behaviors they will not be material to other disabilities which will be irreversible. However, as the medical evidence stands, Claimant has not complied with the issues and considerations at 20 CFR 416.930. As the medical evidence stands, it does not rise to statutory disability as it is defined under the law pursuant to the issues and considerations at 20 CFR 416.913. 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.

/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

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:

