

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

IN THE MATTER OF:



Reg. No.: 20138396
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 13, 2013
County: Kalamazoo

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 February 13, 2013.

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 5/22/12, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On 10/15/12, the MRT denied.
4. On 10/18/12, the DHS issued notice.
5. On 10/22/12, claimant filed a hearing request.
6. On 12/18/12, the State Hearing Review Team (SHRT) denied claimant.
7. Claimant has been denied her 6/24/11 SSI application with the Social Security Administration (SSA) pursuant to an unfavorable decision by

Judge [REDACTED] issued on 10/18/12. Judge [REDACTED] denied Claimant at step two of the sequential analysis – non-severe impairment. Claimant submitted a certified mail receipt as proof that she has appealed Judge [REDACTED] decision to the appeals council with SSA. That appeal is not reflected in the SOLQ.

8. Claimant is a [REDACTED]-year-old female standing 5'6 tall and weighing 255-269 pounds. Claimant's BMI is 43.4 classifying Claimant as morbidly obese under the body mass index.
9. Claimant does not use alcohol, does not use drugs, and no smoking.
10. Claimant has a [REDACTED] [REDACTED] and can drive an [REDACTED]
11. Claimant has a [REDACTED] in [REDACTED] [REDACTED]. Claimant further testified that she has two [REDACTED] [REDACTED] – she also has a degree from [REDACTED] [REDACTED].
12. Claimant is not currently working. Claimant indicated that she worked for 6 ½ years as a chore provider for her [REDACTED] – from 2005 until 2012 when DHS stopped services due to a determination that Claimant's [REDACTED] no longer qualified for services. Claimant has also worked in customer service and data entry. Claimant has an unskilled/semi-skilled work history
13. Claimant alleges disability on the basis of diabetes, arthritis of her left knee, hives, depression, possible bi-polar disorder.
14. The 12/18/12 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Medical Summary:

An emergency room visit (ER) dated 3/11/12 shoed the Claimant's motor function, sensation and reflexes were normal. Breath sounds were normal. She had a rash. Extremities were non-tender. She had good lower extremities sensation and muscle strength. Impression was tingling of the lower extremity (records from DDS).

A pulmonary function study dated 3/23/12 demonstrated some mild air trapping. There was no significant obstruction. The reduction in forced vital capacity may be related to inconsistent effort or weight (records from DDS).

An examination dated 5/14/12 showed the Claimant was 66' and 268.8 pounds with a BMI of 43.4. Her blood pressure was 128/96. She had an erythemic-raised area on her right forearm but no other areas noted. Her pulmonary function study was normal and CBC was normal (p. 99).

A psychological evaluation dated 8/9/12 showed the Claimant had never been psychiatrically hospitalized (p. 23). She is able to cook, shop and drive. Her grooming/hygiene were good. Eye contact was good. She appeared to be covertly angry about many situations and impressed as a person who had low stress tolerance (p. 24). She had an odd inflection to her speech with an unusual prosody. However, her speech was clear. She remained on topic and thoughts tended to be rigidly expressed. She did not appear to be responding to internal stimuli. She denied hallucinations. She reported being depressed. She had a somewhat flat affect at first, with better emotional range as she continued the interview (p. 25). Diagnoses included mood disorder and personality disorder (p. 28).

Recommendation:

Denied per medical vocational grid rule 201.27 as guide.

15. The psychological evaluation completed on [REDACTED] by [REDACTED] states in part that Claimant was cooperative, not overtly hostile, but appeared to have little insight into her behavior. Claimant also appeared to be covertly angry with many situations and impressed as a person who has low stress tolerances.
16. Claimant's activities of daily living (DHS-49-G) indicates that Claimant does vacuuming, cleaning, lawn mowing, shoveling snow, dishes – "whenever it needs to be done." Claimant spends time on the computer and pursuant to a psychological evaluation enjoys Facebook. Claimant also enjoys going to Church activities with the ladies missionary group.
17. Claimant pointed out a mental residual functional capacity evaluation (DHS-49-E) completed on 6/5/12 by a non-physician has Claimant markedly limited in all the categories with regards to Social Interaction. Claimant had 11 categories out of 20 where it was indicated that Claimant has no evidence of any limitations in those categories: There is no evidence of any limitation in this category as to Understanding and Memory, Sustained Concentration and Persistence.

18. Claimant has been evaluated for some tingling in the lower extremities which to appeared to be related to Claimant's diabetes.
19. Claimant's description of her symptoms was not corroborated by the great bulk of medical evidence.

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). As noted in the findings of facts, the federal ALJ denied Claimant on the basis of a non-severe impairment – step two sequential analysis. This ALJ would agree with the great bulk of the medical evidence but would like to give some weight to Claimant's obesity which is obvious is creating great problems for Claimant. However, as already noted, obesity will not in of itself be a basis for statutory disability under Federal and State law as it was removed from the listing of impairments at the same time that Congress removed alcoholism and drug addiction. 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 grid rule 201.27 as a guide.

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 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 noted that Claimant's obesity is the "individual responsibility" type 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.

It is noted that Claimant has a good appetite and she is able maintain her weight well beyond the nutritional requirements as her BMI is 43 – morbid obesity.

It is also noted that while Claimant has some issues to deal with, the great bulk of the medical evidence does not corroborate Claimant's descriptions of the symptoms as being disabling and severe, pursuant to the issues and considerations at 20 CFR 416.913 and 416.927. In fact, Claimant's descriptions of activities of daily living are inconsistent with statutory disability as it appears that her bulk of mental and physical impairments do not restrict her ability to engage in most activities of daily living as indicated on her activities of daily living – Claimant is able to vacuum, clean, shoveling snow, etc.

As to the shortness of breath, it is no indication that this is related to any organic or medical problem – other than Claimant's obesity.

As to Claimant's diabetes, there is no indication that it interferes with Claimant's ability to engage in work.

Claimant clearly has some significant issues. However, these are not the kinds of problems anticipated by statutory disability as meeting the definition. Thus, the DHS actions 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: 4/5/13

Date Mailed: 4/8/13

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

20138396/JGS

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/jk

cc:

