

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20133970
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: February 5, 2013
County: Oakland County DHS #3

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. Claimant was represented by herself and personally appeared and testified. The department was represented by [REDACTED].

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 March 22, 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 22, 2012, the MRT denied.
4. On September 25, 2012, the DHS issued notice.
5. On October 8, 2012, Claimant filed a hearing request.

6. On December 13, 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 May 29, 2013 SHRT once again denied Claimant.
7. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a [REDACTED]-year-old [REDACTED] standing 5'2" tall and weighing 131 pounds.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes. Claimant has a nicotine addiction.
10. Claimant has a [REDACTED] and can drive an automobile.
11. Claimant has a [REDACTED].
12. Claimant is not currently working. Claimant last worked in 2005. Claimant testified that she did not work for many years because "I did not need to financially when I was married." Claimant's work history is semi-skilled.
13. Claimant alleges disability on the basis of back pain, kidney issues, no bladder control, PTSD, depression, anxiety.
14. The December 13, 2012 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

Evaluation on September 8, 2012 noted she was slightly limited in range of motion of the lumbar spine. All other joints were normal. Motor strength was normal and sensation was intact.

Exhibit 44 indicates normal mental status examination.

...Analysis:

The claimant has a slight limited range of motion of the lumbar. All other joints were normal. Motor strength and sensation normal. Kidney stones and past bladder infections. No current urinary complaints. Normal mental status evaluation. Capable of performing past work as a file clerk. Denied per 202.3.
15. The May 29, 2013 subsequent SHRT decision is adopted and incorporated by reference herein/to the following extent:

New information: On September 12, 2012 best corrected vision 20/20 OD and OS are within normal limits.

October 10, 2012 urology exam shows Claimant complains of kidney stones, stress associated with urinary incontinence, and recurrent urinary tract infections. Abdominal exam revealed no masses, no tenderness, no abdominal wall hernia, and liver and spleen appeared normal. Gait normal. Diagnosis included incontinence, UTI, lumbago, chronic migraines, and tobacco use disorder. Denied with 202.1 as a guide.

16. A mental residual functional capacity assessment completed on October 19, 2012 shows that Claimant is not markedly limited in any of the twenty categories.
17. A DHS 49 completed by Claimant's treating physician on July 11, 2012 indicates Claimant is stable and can meet her needs in the home. With regards to the physician's medical evidence upon which he draws his conclusions, the physician notes "working on it." Exhibit 44.
18. A letter dated October 11, 2012 from Claimant's treating physician indicates Claimant needs continuous medical attention. The letter does not contain corresponding medical documentation.
19. A physical evaluation completed September 8, 2012 does not include any statutorily disabling impairment.

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 concurs with the SHRT decisions in finding Claimant not disabled at Step Five of the sequential analysis. On the section of the form on Exhibit 44 where it indicates the medical

evidence upon which the physician draws his conclusion, the physician notes: “working on it.” A few months later on the 10/11/12 letter from Claimant’s same treating physician, the physician notes that Claimant needs “continuous medical attention.” As noted by SHRT, these two statements are incongruous and do not meet the issues and requirements found 20 CFR 416.928:

Claimant reported a history of laminectomy in 2000. Treating physician indicated in 10/2012 that Claimant had severe back pain secondary to disc compression on one nerve. At examination in 9/2012 showed normal motor strength sensations and reflexes. She had no muscle spasms or tenderness in the spine. Grip strength and dexterity were intact. Gait was normal.

Thus, Claimant’s treating physician’s opinion is considered conclusionary pursuant to the issues and considerations at 20 CFR 416.927.

It is noted that Claimant’s age of 48 under the law is considered to be a fairly young individual as it is applied to the medical vocational grids.

It is also noted that there is no evidence to indicate that Claimant’s bereavement problems or mental status issues rise to statutory disability under the sufficiency standards at law - that is meet the issues and requirements found at 20 CFR 416.913(b).

With regards to the physical evaluation, the overall findings in this report do not rise to statutory disability as they do not meet the issues and considerations found in 20 CFR 416.913. Nor do they meet Claimant’s symptoms as expressed by her under the issues and considerations found in 20 CFR 416.927.

While Claimant’s treating physician also indicates that Claimant’s condition is stable and she does not need any assistance with her activities of daily living and thus is considered independent medically. Exhibit 44.

While Claimant obviously has some issues and medical concerns, unfortunately for her under statutory disability the medical evidence must be thoroughly significant and severe to show an impairment or group of impairments must last 12 months or more and meet the sufficiency requirements per 20CFR 416.913. This ALJ does not find that they meet this level at this point in time.

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.

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: 7/25/13

Date Mailed: 7/25/13

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;

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- 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/hj

cc:

