

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201337660
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: July 18, 2013
County: Ionia 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, an in-person hearing was held. Claimant personally appeared and testified. The DHS was represented by Mr. J [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 2-5-13, Claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA.
3. On 3-22-13, the MRT denied.
4. On 3-27-13, the DHS issued notice.
5. On 3-29-13, Claimant filed a hearing request.
6. On 6-18-13, the State Hearing Review Team (SHRT) denied Claimant. Claimant requested that the record be held open in order for the submission of new medical documentation. On 7-25-13, the undersigned ALJ issued an Interim Order Extending the Record allowing Claimant

additional time to have a) CMH records, b) a DHS- 49, and c) medical records from back surgery in 2011. On 8-27-13 Claimant's eligibility specialist informed the ALJ that Claimant submitted the CMH records but neither the DHS 49 (a) nor the surgery records (b) were received. Pursuant to the submission of only Claimant's mental health records for a subsequent review, on 11-5-13, SHRT once again denied Claimant.

7. It is unclear if Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a 56-year-old female standing 4'11" tall and weighing 124 pounds.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes. Claimant has a nicotine addiction.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has a high school diploma. Claimant was not in special education.
12. As of the date of application, Claimant's indicated on her application that she was working delivering shoppers guide newspapers, part time. Claimant's work history is semi-skilled. Claimant was last gainfully employed as a cook when the restaurant shut down in 2-2013.
13. Claimant alleges disability on the basis of numbness of the hands, foot pain, loss of control of arms, back and nerve issues. Claimant did not list a mental impairment at application. Claimant's evidence consists of primarily mental health treatment and lacks medical evidence to show a physical impairment(s).
14. The 6-18-13 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

...history of back surgery [by self-report] in 2011. Physical exam of 2/25/13 reports back and shoulder pain. Bilateral weakness in the hands; numbness and tingling bilaterally of hands, feet and legs. ...no medical evidence in the file to support finding of being disabled.
15. The subsequent 11-5-13 SHRT decision is adopted and incorporated by reference herein.
16. New mental health records show Claimant's appearance appropriate and motor activity normal. Speech unremarkable. Reported tired of being tired.

Reports being in pain all the time . Affect angry and mood was sad, irritable, depressed, and tearful. Thought processes unremarkable. Claimant reported that she lost her job at local café because business closed their doors. Overwhelmed by her circumstances. Diagnosed with major depressive disorder and acute stress disorder.

17. Claimant attacked the credibility of the DHS-49 in first medical packet dated 2-25-13. That report states that Claimant cannot work. The report contains no medical evidence to support its conclusions.
18. Claimant was given an opportunity to submit a new DHS-49 but failed to submit a new DHS-49.
19. Claimant was a credible witness.

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 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).

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). 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 concurs with the SHRT decision in finding Claimant not disabled on the basis that the medical evidence requires a finding that Claimant is capable of past relevant work pursuant to 20 CFR 416.920(e) and (f).

In reaching this conclusion, it is noted that 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).

As to Claimant's alleged mental impairments, Claimant has significant issues. However, under federal and state law, evidence must show that the symptoms interfere with an individual's ability to engage in work and work like settings. This ALJ, in conjunction with SHRT, does not find that Claimant's evidence rises to the this level. 20 CFR 416.913.

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.

As to Claimant's physical impairments, there is little to no medical evidence. Claimant was given the opportunity to submit additional medical documentation regarding her alleged physical impairments. In fact, Claimant's medical file is insufficient to find that there is any medical evidence that shows that Claimant's medical evidence supports her alleged physical impairments: numbness, back and nerve issues, and foot pain. 20 CFR 416.97 requires such evidence. Even though this ALJ finds that Claimant was a credible witness, and even though there is a DHS 49 t that states that Claimant cannot work (despite Claimant attacking its credibility), the law does not allow a finding of disability absent substantial and credible medical evidence to support opinions/conclusions such as medical tests, laboratory findings, EKGs, GXT, x-rays, etc. See 20 CFR 416.913. In fact, 20 CFR 416.927 classifies such statements by any physicians as conclusionary, and not medical evidence.

For these reasons and for the reasons stated above, 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**.

Janice

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

Date Signed: November 8, 2013

Date Mailed: November 8, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt 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 affect the substantial rights of the claimant,
 - 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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JGS/hj

cc:

