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

IN THE MATTER OF:

[redacted]

Reg. No: 201310266
Issue No: 2009; 4031
Case No: [redacted]
Hearing Date: February 12, 2013
Midland 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, an in-person hearing was held on February 12, 2013. The claimant appeared and provided testimony. Claimant was represented by Advomas. The department witness was [redacted].

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 June 27, 2012, claimant applied for MA with the Michigan Department of Human Services (DHS).

2. Claimant applied for retro MA.

3. On September 23, 2012, the MRT denied.

4. The DHS issued notice of the denial.

5. On November 9, 2012, claimant filed a hearing request.

6. Claimant testified at the administrative hearing that he has filed a new disability application with the Social Security Administration (SSA).

7. On January 9, 2013, the State Hearing Review Team (SHRT) denied claimant. It is noted that the claimant's representative objected to the information contained in the SHRT decision that indicated that the physical examination of July 13, 2012 reported uncontrolled diabetes due to noncompliance with medication. After reviewing all of the enclosed medical records, this Administrative Law Judge finds that the SHRT was referring to the medical record contained in Department Exhibit A on page 300 (not in the additional medical evidence, Exhibit C, as was assumed at hearing).

8. As of the date of hearing, claimant was a 28-year-old male standing 5'11" tall and weighing 125 pounds. Claimant has a high school education and two years of college.

9. Claimant testified that he does not smoke cigarettes, drink alcohol or use illegal drugs.

10. Claimant has a driver's license and can drive an automobile.

11. Claimant is not currently working. Claimant last worked in 2008 doing general labor for a temporary service. Each job assignment was of short duration, with the longest being six months.

12. Claimant alleges disability on the basis of diabetes and diabetic neuropathy.

13. A September 19, 2011 progress note finds that the physician questions the claimant's insulin adherence. The physician noted that the claimant's glucose log and the way it was written and listening to his history and looking at the previous documentation in the endocrinology clinic, he did not think that the claimant was taking his insulin the way he had documented or claimed and that, even if he was taking his insulin, the lipohyperthrophy of the thighs and his inability to tell him how much insulin he takes for his frequent snacks that he claimed to take, made his whole story questionable.

14. On January 22, 2012, the claimant was admitted to the hospital with a blood sugar of 700 with diabetic ketoacidosis.

15. On March 27, 2012, the claimant presented to the emergency room with diabetic ketoacidosis with a blood sugar of 862 on admission. The physician opined that he is not adherent to his follow up, glucose monitoring and insulin administration. The physician indicated that it is extremely unlikely that he is adherent to his medications, given his A1c of 14%. The claimant was diagnosed with diabetic ketoacidosis secondary to noncompliance.

16. On April 23, 2012, the claimant was admitted to the hospital with nausea, vomiting and lethargy. His venous blood sugar in the emergency room was 784. Claimant was diagnosed with diabetic ketoacidosis. The physician noted that the claimant has a history of noncompliance, with no follow up or communication in between his hospital admission with the clinic. Claimant was advised to keep his follow up appointments with the endocrinology office. The physician indicated that it did not seem that claimant was compliant with his insulin regimen as when he is stabilized in the hospital, a lower dosage than his home regimen of Levemir 15 units b.i.d. with variable short acting insulin produced hypoglycemia. The claimant then stated his dietary in adherence caused the uncontrolled diabetes, however, his thin body frame and the dosage of insulin and his A1c of 14% pointed to inadherence as the likely cause. The claimant then blamed his pain medication with interfering with his daily activities or causing him to forget his insulin use.

17. A May 19, 2012 follow-up visit found the claimant was trying to be compliant with medical nutrition therapy and count carbohydrates. His blood sugars were running between 100 and 400. Claimant reported reasonable symptom control of the neuropathy with the Cymbalta.

18. On May 27, 2012, the claimant presented to the emergency room complaining of a sore throat, cough, and high blood sugars. Physical examination found no motor deficits. There were sensory deficits to the bilateral lower extremities from the knees down, with claimant having no sensation of touch. Deep tendon reflexes were equal and symmetric. Claimant was diagnosed with diabetic ketoacidosis. Claimant was discharged on May 29, 2012.

19. A June 7, 2012 progress note indicates that the claimant was compliant with insulin injections and the diabetic ketoacidosis from May, 2012 appeared to be induced by a viral illness resulting in nausea, vomiting and dehydration. He noted that the insurance had not covered the Cymbalta, so he was going to place the claimant on gabapentin.

20. A July 13, 2012 progress note indicates that the claimant was now able to get the Cymbalta, so he was switched from the gabapentin to the Cymbalta. His pre-meal sugars were running in the range of 160 – 250. The physician indicated that the claimant seemed to be noncompliant with diabetes injections and nutrition therapy now, which had resulted in a decrease in hemoglobin A1c to 11.

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 Program 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 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)
> Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

> (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.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant’s symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

> (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
> (2) Capacities for seeing, hearing, and speaking;
>
> (3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8. The claimant testified at the hearing that he is capable of walking 1 – 1 ½ mile at one time; that he can stand for up to one hour at a time; that he can sit for up to 2 – 2 ½ hours at one time; and that he can lift up to 20 pounds. The claimant also testified that he is independent with his activities of daily living and that he helps care for his newborn child.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in at least sedentary work activities on a regular and continuing basis.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do

his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant does not have the relevant work history to make a determination at this level. The analysis continues.

At the last step of the sequential evaluation process, the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. 20 CFR 404.1520(g) and 416.920(g).

Claimant has submitted insufficient objective medical evidence that he lacked the residual functional capacity to perform at least sedentary work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he could not perform at least sedentary work. Under the Medical-Vocational guidelines, a younger individual (age 28) with a high school education or more and an unskilled or no work history who can perform at least sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

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 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**.

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

Date Signed: March 19, 2013

Date Mailed: March 20, 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.

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

SLM/cr

cc: [redacted]