

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

**IN THE MATTER OF:**



Reg. No.: 201310508  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: February 20, 2013  
County: Macomb 20

**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 20, 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 8/27/12, Claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On 11/2/12, the MRT denied.
4. On 11/7/12, the DHS issued notice.
5. On 11/13/12, claimant filed a hearing request.
6. On 1/4/13, the State Hearing Review Team (SHRT) denied claimant.
7. By way of Claimant's testimony, Claimant an appeal pending with SSI with the Social Security Administration (SSA).

8. Claimant is a [REDACTED]-year-old female standing 5'6 and weighing 275 pounds. Claimant's BMI 42.6 classifying Claimant as morbidly obese under the body mass index. Claimant testified that she gained approximately 160 due to thyroid problem. The Medical evidence does not indicate a severe thyroid problem. Contrary medical indicates diagnoses of diabetes initially on 9/15/12.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a [REDACTED] [REDACTED] and can drive an [REDACTED]
11. Claimant has an 11<sup>th</sup> [REDACTED] [REDACTED]
12. Claimant is not currently working. Claimant testified she last work approximately 4 years ago where she worked for 22 years in production work and she was laid off. Claimant collected [REDACTED] for two years.
13. Claimant was diagnosed with diabetes approximately 1½ years ago. Claimant does not know if it was correlated with the significant and severe weight gain.
14. The 1/4/13 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

**Medical Summary:**

A DHS-49 form dated 9/15/12 indicated the Claimant was diagnosed with diabetes when she was an inpatient in January 2012 with fatigue and malaise (p. 24).

An examination dated 9/26/12 showed the Claimant was 5'6 and 264 pounds with a BMI greater than 35. She had minimal shortness of breath throughout the examination with no extra breath sounds. There was mild tenderness to palpation in the lower lumbar area and crepitus with flexion and extension of both knees. She did not use a can or aid for walking. Her gait was within normal limits. There were not abnormalities of sensory functions (p. 6-7). Reflexes were normal and there were not functional limitations (p. 11).

**Analysis:**

The Claimant was diagnosed with diabetes. She had a BMI greater than 35. She had minimal shortness of breath throughout the examination. There was mild tenderness to palpation in the lower lumbar area and crepitus with flexion

and extension of both knees. Her gait was within normal limits. There were no abnormalities of sensory functions. Reflexes were normal and there were no functional limitations. She described her past work as light (p. 18).

**Recommendation:**

Denied per 20 CFR 416.920(e).

15. A [REDACTED] evaluation date 9/26/12 contains a MSO stating that Claimant would benefit from a strict and consistent diabetic diet. Claimant's BMI is greater than 35 – 40 and is having chronic knee pain as well as shortness of breath and hot flashes. Exhibit 7.
16. A functional capacity assessment done for DDS on 9/26/12 does not find any significant limitations.
17. Medical evidence as well as Claimant's testimony and information DHS-49-G indicates Claimant is independent with her activities of daily living including preparing basic meals, dusting, dishes, laundry, bathroom and grooming needs.

**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 decision of finding Claimant not disabled pursuant to 20 CFR 416.920(e).

In reaching this conclusion, it is noted that Claimant's testimony, as well as the medical evidence, basically indicates that Claimant is essentially independent with her activities of daily living. Claimant does not have any medical determinable problems which interfere with her ability to engage activities of daily living as well as work and work like settings.

Claimant primary problem appears to be her obesity which is affecting her joints and fatigue.

Claimant's stipulated that the medication she takes does keep her diabetes under control.

The overall bulk of the medical evidence pursuant to the issues and considerations at 20 CFR 416.913 does not show statutory disability.

The 6<sup>th</sup> 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 (6<sup>th</sup> 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.

In addition, it is noted that the [REDACTED] evaluation contains a medical source statement that states input:

Based upon the history and the exam, the examinee would benefit from a strict and consistent diabetic diet.

### **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/

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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

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:

