

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

IN THE MATTER OF:



Reg. No.: 2013-32775
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: July 17, 2013
County: DHS-Gratiot

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 July 17, 2013. Participants appearing on behalf of the Claimant included the Claimant, and a witness, [REDACTED]. Participants on behalf of the Department included, [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 November 29, 2012, 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 February 11, 2013, the MRT denied.
4. On February 15, 2013, the DHS issued notice.
5. On March 05, 2013, Claimant filed a hearing request.
6. On May 23, 2013, the State Hearing Review Team (SHRT) denied Claimant.

7. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a [REDACTED]-year-old standing 6'1" tall, and weighing 155 pounds.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant does not have a driver's license due to it being revoked for a motor/vehicular accident.
11. Claimant has a [REDACTED].
12. Claimant is not currently working. Claimant was incarcerated in the last fifteen years, during which he did work duty. Claimant suffered a first heart attack while [REDACTED] and did not do the same work duty following the heart attack. Claimant currently works doing detailing for cars and indicates he is self employed. Claimant's work history is unskilled
13. Claimant alleges disability on the basis of coronary artery disease, high blood pressure, heart attack, hypo-thyroidism, and spots on the lungs.
14. The May 23, 2013, SHRT findings and conclusions of its decision are adopted and incorporated by reference herein/to the following extent:

MEDICAL SUMMARY:

"History of coronary artery disease status post stenting in 2007. On November 29, 2012, he underwent a left coronary angiogram to the proximal left circumference, including the PTCA and three stents. A CAT scan of the chest on February 20, 2012, showed five or so lung nodules in the left, upper lobe, and middle lobe (DDS medical records). The physical exam on November 29, 2012, reports blood pressure was 130/80. The neck area had no thyromegaly. His lungs were clear".

ANALYSIS:

"...released in stable condition. Blood pressure controlled. Physical exam shows no thyromegaly in the neck and lungs were clear. As a result of the Claimant's combination of severe physical condition, he is restricted to performing light work. He retains the capacity to lift up to 20 pounds occasionally, 10 pounds frequently, and stand and walk for up to 6 of 8 hours". DHS Exhibit 315. Denied per 202.20 as a guide.

14. The Claimant has two subsequent re-applications, which include new medical documentation for new medical issues, not reviewed herein.
15. Claimant's testimony at hearing focused on problems with his back, which was not alleged at application. Claimant did not allege physical restrictions with regards to the alleged impairments at issue herein.

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 with SHRT decision in finding Claimant not disabled pursuant to medical vocational grid rule 202.20 as a guide.

In reaching this conclusion, it is noted the Claimant wanted to add additional medical documentation with regards to gall bladder surgery. This surgery was done after Claimant's application. Claimant alleged that he was incorrectly instructed by the Department with regards to subsequent re-applications and hearing requests. In order to make a ruling on the submission of new and additional medical documents, and whether this hearing was to be combined with a subsequent denial, the undersigned Administrative Law Judge allowed the Claimant to have two separate individuals enter the hearing room to be examined as witnesses. The testimony by the witnesses did not corroborate or indicate that there were any irregularities herein, or that there was any instruction that Claimant should not file any hearing requests on any subsequent re-applications. There is a strong administrative mandate to deny submission of new medical documentation where the alleged impairments do not include those impairments as statutorily disabling at application. This Administrative Law Judge has reviewed the entire record and the testimony and does not find that the gall bladder surgery and/or the back issues are to be considered in the statutory disability

assessment herein, as they were not alleged at application. Moreover, Claimant has two subsequent re-applications, which should include this medical and was review, or is being reviewed currently by MRT and SHRT.

Within the standard of care and general expectations within the medical community, Claimant's alleged impairments in this application do not meet statutory disability for the reasons set forth herein, and in the facts. The facts indicate the Claimant retains the capacity to lift 20 pounds occasionally, 10 pounds frequently, and stand or walk for up to 6 of 8 hours. Claimant can do light and/or sedentary work. The law defines Claimant as a fairly young individual and as such, the law requires a finding under the medical vocational grades of not disabled. The standard for statutory disability is very high and very strict. This medical evidence does not rise to the same and thus, the Department's denial 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: 7/26/13

Date Mailed: 7/30/13

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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JGS/pw

cc:

