

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

IN THE MATTER OF:



Reg. No.: 2013-43658
Issue No.: 2009;4031
Case No.: [REDACTED]
Hearing Date: October 2, 2013, 2013
County: Oceana

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 personally appeared and testified. The DHS was represented in part 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 2-13-13, Claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant applied for 3 months of retro MA. Claimant did not apply for retro MA.
3. On 4-10-13, the MRT denied.
4. On 4-16-13, the DHS issued notice.
5. On 4-19-13, Claimant filed a hearing request.

6. On 7-30-13, 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 12-18-13 SHRT once again denied Claimant.
7. Claimant has been denied SSI by the Social Security Administration (SSA). Claimant filed a timely appeal.
8. Claimant is a 39-year-old male, standing 6'3. Evidence indicates that Claimant weighs 450 pounds. At hearing, Claimant testified that he weighs 548. Claimant has had gastric bypass surgery approximately 3 years ago.
9. Claimant does not have an alcohol/drug abuse problem or history.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant has a high school education.
12. Claimant is not currently working. Claimant reports in the medical evidence that he last worked in 2010. Claimant testified at hearing that he last worked in December 2012 as an in home care provider for his mother. Claimant's work history is semi-skilled. Claimant has worked as an EMT from 2001 to 2008.
13. Claimant alleges disability on the basis of back pain, hypertension, obesity, depression, anxiety.
14. The SHRT findings and conclusions of its 7-30-13 decision are adopted and incorporated by reference herein.
15. The subsequent 12-18-13 SHRT decision is adopted and incorporated by reference herein.
16. On 7-29-2012 Claimant was seen at Mercy Health ER visit complaining of 'sour stomach,' history of depression, obesity and ulcer disease, normal EKG, normal x-ray.
17. A 2-27-13 Memorial Family care office visit indicates expiratory wheezes.
18. CMH evaluation on 5/3/12 indicates stable, primary physician continues to prescribe medications. Mother recently passed away.
19. Newly submitted evidence includes MRI of lumbar spine on 8/19/13 showing multilevel degenerative changes of the thoracolumbar; mild left and minimal right L4-5 and mid left L5-S1 neural foraminal stenosis.

20. A physical examination of 8/1/13 reports blood pressure of 144/89, weight 4 50 pounds. Normal range of motion of all joints . Muscle strength of the extremities normal. Intact sensations.
21. An 8-5-13 radiology report of the “lumbosacral complete” concludes moderate degenerative changes.
22. A Mental Status Evaluation per exhibit p 13 states that Claimant has a prognosis that is fair-anxiety controlled by medication. Major barrier to employment appears to be the medical issues associated with gastric bi-pass surgery. The report concludes: “...psychologically, [Claimant] should be able to work. This examiner cannot speak to his medical issues.”
23. Claimant complained at hearing that his condition is worsening.

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 addiction 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 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 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 in finding Claimant not disabled pursuant to medical vocational grid rule 202.13.

In reaching this conclusion it is noted that Claimant contends that his gastric by-pass surgery caused him many medical problems, including a weight gain of 100 pounds in 60 days. As noted by SHRT, Claimant weighed 450 pounds on 8-1-13; at hearing on 10-2-13, Claimant reported that he weighed 548. Certainly, Claimant's statement that his condition is worsening when viewed in the context of a 100 weight gain in 2 months is supported. However, a worsening condition by itself does not rise to statutory disability unless it interferes with an individual's ability to engage in SGA.

Claimant's mental status exam concludes that Claimant is limited in large part due to his behavioral and life style choices, not psychological. In fact, the exam concludes: 'psychologically, Claimant should be able to work.'

It is noted that Claimant's obesity is an "individual responsibility" types of behavior reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th cir 1988) decision. In *SIAS*, the Claimant was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Claimant to reduce his body weight. The court said in part:

...The Claimant's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The Claimant admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Claimant in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

In *SIAS*, the Claimant was found not truly disabled because the secretary disregarded the consequences resulting from the Claimant's unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th Cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and smoking. Issues related to these problems often result from life style choices. In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many life style behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling" see *SIAS*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop

smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fails to follow the recommended or prescribed treatment program.

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.

It is further noted that the law classifies Claimant as a very young individual at 39 years old. Claimant's radiology reports show mild and degenerative findings-normal ageing, and/or 'mild degenerative' findings are not recognized by federal and state statutory disability. And, as already noted, obesity by itself was removed from the Listings of Impairments by Congress about the same time as the removal of alcohol and drug addiction. In time, if Claimant's obesity problem does not reverse, his medical state will change to independent disease state. However, at 39, and taking into the entire medical record, the evidence does not currently rise to statutory disability.

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: January 3, 2014

Date Mailed: January 7, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

JGS/tb

cc:



