

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-21972

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 18, 2007

Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 December 18, 2007. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is a 49-year-old high school graduate with one year of post-secondary education who has been employed in only unskilled, temporary service positions since 2000, when she returned to [REDACTED] from [REDACTED] after her jail release in May, 2000 on a drug-related offense.

(2) Claimant's records do not verify any history of psychiatric hospitalization; however, she did participate in outpatient counseling for depression; she ended this treatment in August, 2007.

(3) Since then, claimant's current treating family physician has maintained her on Prozac for self-reported depression which was noted to be effective in keeping her mood stabilized (Department Exhibit #1, pg 185).

(4) A [REDACTED] note written during claimant's treatment period (12/7/06) assesses her GAF at 65 (normal) and states in relevant part:

Some mild symptoms (e. g. depressed mood and mild insomnia) OR some difficulty in social, occupational, or school functioning (e. g., occasional truancy, or theft within the household) but generally functioning pretty well, has some meaningful interpersonal relationships (Department Exhibit #1, pg 205).

(5) Claimant has been married three times, twice divorced and currently separated since 2005; she alternates residing between a friend's and her adult children's residences (Department Exhibit #1, pgs 187 and 201).

(6) Claimant underwent right carpal tunnel surgery in December, 2006 and left carpal tunnel surgery in January, 2007 (Department Exhibit #1, pgs 63 and 189).

(7) An August 29, 2005 treatment note indicates claimant was reporting exacerbated low back pain which started after walking up stairs in high heels and worsened following her bike ride home (Department Exhibit #1, pgs 135 and 136).

(8) Claimant stands approximately 5'2" tall and weighs approximately 145 pounds; she is right hand dominant (Department Exhibit #1, pgs 52, 59 and 63).

(9) A December 7, 2006 patient assessment indicates claimant used no assistive devices and had no mobility concerns at that time (Department Exhibit #1, pg 199).

(10) March 19 and May 14, 2007 assessments indicate claimant presented as a well-dressed, well-groomed female of average height and weight with a normal gait, good eye contact, stable affect and no speech/communication difficulties (Department Exhibit #1, pgs 176 and 179-180).

(11) Cervical spine x-rays taken the year before (8/06) reveal severe disc space narrowing and bilateral foraminal narrowing at C5-6 and C6-7 (Department Exhibit #1, pg 133).

(12) Additionally, a lumbar spine MRI taken two months earlier (6/06) reveals bilateral L5-S1 canal stenosis (somewhat greater on the right) with no evidence of nerve root compression within claimant's spinal canal; however, the examining physician speculated compression was considered likely and might be more severe in positions other than the neutral supine position employed for this particular test (Department Exhibit #1, pg 131).

(13) X-rays taken of claimant's hips at that same time revealed no abnormalities (Department Exhibit #1, pg 128).

(14) In April, 2007, claimant was treated in [REDACTED] [REDACTED] for reported pain (Department Exhibit #1, pgs 112 and 113).

(15) The treating doctor was waiting outside for a different EMS patient when he saw claimant enter the building ambulating without difficulty (Department Exhibit #1, pg 113).

(16) Upon examination via palpation, claimant reported no cervical, thoracic or lumbar spine pain, although she did acknowledge right buttock pain which the doctor attributed to sciatica because no focal neurological deficits were evidenced by clinical testing (Department Exhibit #1, pgs 112 and 113).

(17) Claimant's May 31, 2005 spirometry test was consistent with moderate emphysema/asthma but found to be highly responsive to bronchodilators (Department Exhibit #1, pgs 17 and 111).

(18) When the department denied claimant's April 16, 2007 disability application (MA/SDA), she filed a hearing request dated July 10, 2007.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(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. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant is not disqualified from receiving MA/SDA at Step 1, because she has not been gainfully employed since 2000 (See Finding of Fact #1 above).

At Step 2, claimant's diagnosed physical impairments (lumbar/cervical disc disease and emphysema/asthma), in combination, have left her with some range of motion limitations, periodic shortness of breath and pain. However, it must be noted no severe mental impairments have been shown and all claimant's reported symptoms appear capable of adequate management as long as compliance with the current medication schedule is maintained.

Furthermore, it must be noted 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 employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed physical impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention she cannot return to factory work (temporary services) since that job may exacerbate claimant's breathing difficulties and pain because it requires excessive standing, walking, bending, lifting, etc. sometimes in a poorly ventilated area. As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with one year of post-secondary education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of

record, that claimant retains the residual functional capacity to perform at least sedentary work, as that term is defined above.

Claimant's biggest barrier to employability appears to be her recent lack of any connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions, because she can return to other sedentary work, as directed by Med-Voc Rule 201.21.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 13, 2009

Date Mailed: May 13, 2009

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 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.

2007-21972/mbm

MBM/db

cc:

