

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: 2008-11440
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 2008
Wayne 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 May 6, 2008. 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 right-handed, single, 52-year-old high school graduate who resides with her sister in their parent's former residence; she is a non-smoker/non-drinker.
- (2) Claimant stands 5'5" tall and is medically obese at 240 pounds (BMI=40)(Client Exhibit B, pg 2).

(3) Claimant has a valid driver's license and she is fully independent in all self cares and most basic activities of daily living (Department Exhibit #1, pgs 16-19).

(4) Claimant's past work history consists of unskilled factory work (machine operator/supervisor and packaging/assembly)(Department Exhibit #1, pg 7).

(5) Several years ago claimant was diagnosed with bilateral carpal tunnel syndrome; corrective releases were done in 1996, after which, claimant returned to the competitive work force.

(6) Claimant worked until she had a slip and fall accident in the employee parking lot in February, 2005, which resulted in a torn right rotator cuff; subsequently, she went back to work with restrictions until February, 2007, and also, she filed a Workers Compensation claim secondary to the injury (Department Exhibit #1, pgs 12 and 19; Client Exhibit B, pg 2).

(7) On June 7, 2005, claimant underwent rotator cuff repair (SLAP and subacromial decompression)(Department Exhibit #1, pg 8; Client Exhibit B, pg 2).

(8) On August 30, 2007, claimant applied for disability-based MA/SDA.

(9) Claimant also applied for Social Security disability benefits; that application was denied in June, 2007, and no record of appeal exists in the medical evidence submitted to date (Department Exhibit #1, pg 20).

(10) Claimant did, however, appeal the department's MA/SDA application denial by hearing request dated November 13, 2007.

(11) Claimant alleged impairments at her MA/SDA hearing identical to those already reviewed by the Social Security Administration (SSA).

(12) As of the hearing date (5/6/08), claimant's only medication was over-the-counter aspirin for pain management.

(13) Claimant's March, 2007 right shoulder ultrasound (2 years post injury) shows the repair intact with no re-rupture; this test is essentially normal, but for evidence of osteoarthritis in the right shoulder and a small, loose body within claimant's biceps tendon sheath not uncommon for someone with her treatment history (Department Exhibit #1, pg 10).

(14) Claimant's August, 2007 EMG shows some mild right carpal tunnel syndrome has returned (Department Exhibit #1, pg 11).

(15) Claimant's October 26, 2006 cervical MRI shows disc bulging at C5-6 and C6-7 (Department Exhibit #1, pg 12; Client Exhibit B, pg 2).

(16) Claimant alleges her shoulder, neck and right arm pain with accompanying range-of-motion restrictions and right hand/arm weakness and numbness rise to the level necessary for a disability allowance.

(17) On June 21, 2007, the Social Security Administration (SSA) notified claimant of her disability denial, stating in relevant part:

You said that you were disabled because of torn right rotator cuff, shoulder and neck pain.

We realize your condition prevents you from doing your past job(s). When we apply the Social Security Rules to the medical evidence regarding your condition, we find you are able to do work not requiring as much lifting (Department Exhibit #1, pg 20).

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).

Jurisdiction must be established for a contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: "If the SSA determination

is changed, the new determination is also binding on the department.” 42CFR

435.541(a)(2)(b)(ii). These federal mandates are also reflected in the policy items cited above.

PEM Item 260.

The evidence of record in this case verifies claimant received a final Social Security Administration (SSA) determination. Claimant is now alleging impairments identical to those the SSA has already reviewed. Consequently, under the above-cited regulations and state policy, no jurisdiction exists for this Administrative Law Judge to proceed on the merits of this case. The status quo must remain intact. The department’s action must remain upheld. In closing, this Administrative Law Judge notes claimant would not have prevailed on the merits even if a full analysis was required.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These federal guidelines state in 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 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.

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.

...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.

...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 you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...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).

...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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities....
20 CFR 416.920(c).

...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).

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.

...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).

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).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 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).

Claimant does not qualify for the MA/SDA disability coverage she seeks because she has not established the existence of a medically severe condition which would preclude employability for the necessary durations. In fact, nothing in claimant's medical records establishes she is incapable of working in a wide variety of light, unskilled jobs currently existing in the national economy with some restrictions on heavy lifting, which is the standard to be applied in disability determination cases. Consequently, claimant's disputed application must remain denied based on lack of jurisdiction, or *in arguendo*, based on Med-Voc Rule 202.13, her ability to return to other work.

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.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed:  _____

Date Mailed:  _____

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.

MBM/db

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