

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: 2008-12555
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 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 13, 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 divorced, 46-year-old smoker with an 8th grade education and no driver's license who resides with and is supported by her long-term "significant other" male friend (Department Exhibit #1, pgs 5, 7 and 8).

(2) On October 2, 2007, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA) alleging that chronic low back pain, poor memory, depression and mental problems are severe enough to qualify her for a disability allowance under the governing regulations.

(3) Claimant has no legitimate gainful employment experience but she acknowledges a history of prostitution as her primary income source (Department Exhibit #1, pg 6; Independent Psychiatric Evaluation, pg 1).

(4) Claimant's extensive crack cocaine and intravenous heroin abuse history with repeated treatment for cellulitis secondary to skin popping is well-documented in the medical records submitted to date; she is also Hepatitis C positive, first diagnosed during an April 30, 2006 to May 5, 2006 hospitalization at [REDACTED] (Department Exhibit #1, pgs 7, 9, 39 and 40).

(5) Claimant went to the hospital in April, 2006 in intractable low back pain; she was diagnosed by MRI scan and culture swabs with a 2 x 2 cm epidural abscess between L3 and L5 with secondary mass effect, as well as with central stenosis and advanced facet arthropathy at L4-L5 (Department Exhibit #1, pg 68).

(6) While hospitalized claimant underwent L3 through L5 bilateral laminectomies with medial facetectomies and foraminotomies at L3, L4 and L5, as well irrigation/drainage of the purulent pus pockets the surgeons found behind the affected disc levels (Department Exhibit #1, pgs 76 and 77).

(7) Claimant became agitated due to opiate withdrawal and ended-up leaving the hospital against medical advice (AMA) on May 5, 2006 despite being warned about the risk of infection, paralysis or death (Department Exhibit #1, pg 40).

(8) On May 10, 2006, claimant was readmitted for another nine days because she contracted MRSA at the surgical site (Department Exhibit #1, pg 32).

(9) A PICC line was placed and claimant was discharged on an IV antibiotic ([REDACTED] for 25 more days (Department Exhibit #1, pg 32)(See also Finding of Fact #4 above).

(10) Claimant underwent a voluntary psychiatric three day hospitalization in July, 2007 (7/1/07-7/3/07) secondary to depressive symptoms; she was still actively engaged in heroin use at that time (Department Exhibit #1, pgs 9-12).

(11) Claimant's mental status examination on July 2, 2007 was normal; she exhibited good hygiene/good grooming, bright and appropriate affect, no memory/judgment/recall or processing difficulties and no homicidal/suicidal ideation; GAF = 60 (normal)(Department Exhibit #1, pg 11).

(12) The psychiatrist's discharge plan notes:

The patient is to be discharged in the morning. She does not have any mental illness that she needs medication. She is a heroin addict (Department Exhibit #1, pg 11).

(13) Claimant reported at hearing (5/13/08) she was not in any mental health treatment or counseling, but she obtains antidepressant medications ([REDACTED] about every three months from [REDACTED]

(14) Claimant is fully independent in all self cares and basic living activities.

(15) On July 30, 2008, claimant underwent an independent consultative physical examination.

(16) At that time she reported she was physically capable of walking 1-2 miles at street level, sitting 1 hour uninterrupted and standing for 30 minutes (See Independent Physical Examination, pg 1).

(17) Claimant reported chronic low back pain/stiffness, but she takes no prescription medications for it (See Independent Physical Examination, pg 1).

(18) Claimant's grip strength was good in both hands (5/5), muscle power was good in all extremities, gait/stance was normal and there was no muscle or joint wasting (See Independent Physical Examination, pg 3).

(19) Claimant was diagnosed with posttraumatic lumbar spine osteoarthritis secondary to her 2006 surgery, which is not uncommon for the type of procedure she had (Independent Physical Examination, pg 4)(See also Finding of Fact #6 above).

(20) On July 30, 2008, claimant underwent an independent psychiatric evaluation.

(21) Claimant reported she had not used any illicit drugs for eight or nine months since doing a stint in rehab, consistent with her testimony at hearing (See Independent Psychiatric Evaluation, pg 2).

(22) Claimant reported sleeping 7-8 hours nightly with the help of [REDACTED]; she was noted to have good contact with reality, but emotionally she presented as depressed, anxious, friendly and fearful with blunt affect; her GAF was 55 (60 is normal)(See Independent Psychiatric Evaluation, pgs 3 and 4).

(23) Claimant stands 5'3" tall and weighs approximately 125 pounds; she is right hand dominant; she needs no assistive devices for ambulation.

(24) When the department denied claimant's October 2, 2007 application for disability-based assistance (MA/SDA) she filed a hearing request dated December 7, 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).

Statutory authority for the SDA program states in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (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.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines are also applied in SDA cases. They 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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can

still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, claimant has the burden of proof pursuant to the following section:

...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 federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical reports consistent with claimant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. 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 blood pressure, 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).

Applying the sequential analysis herein, claimant remains eligible at the first step since she has no relevant substantial gainful work history. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the listed 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 his or her past relevant work. 20 CFR 416.920(e). Since claimant has no relevant past work history the analysis must continue.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence submitted, this Administrative Law Judge finds Medical-Vocational Rule 202.17 directs a finding of not disabled, in concurrence with the department's State Hearing Review Team (SHRT) decision dated December 19, 2008.

In reaching this conclusion, this Administrative Law Judge considered claimant's age, educational level, work history and documented impairments (posttraumatic osteoarthritis and depression). She finds insufficient medical documentation to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in any number of light unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases.

Furthermore, everything on this record suggests claimant's mental health will remain stable as long as she continues to practice remission from illicit drug use. As such, claimant's disputed application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's October 2, 2007 MA/SDA application based on a finding she does not meet the rules necessary to qualify for either program.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: July 15, 2009

Date Mailed: July 16, 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.

MBM/db

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