

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: 2008-13130
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 15, 2008
Ogemaw 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 15, 2008. Claimant and her live-in partner 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, 55-year-old high school graduate with one year of college who lives with her significant other in a single story home she owns in [REDACTED]; she has a valid driver's license and vehicle access.

(2) Claimant is medically obese at 5'5" tall and 195 pounds (BMI=32.5).

(3) On Wednesday, March 21, 2007, the local emergency room diagnosed claimant with a displaced right ankle trimalleolar fracture after she slipped on some ice; she was 53 years old at injury onset (Department Exhibit #1, pgs 11-12 and 17-18).

(4) On Friday, March 23, 2007, claimant underwent an open reduction/internal fixation (ORIF) of this ankle utilizing a six-hole, one-third tubular lateral buttress plate with two 40 mm cancellous screws; this provided an anatomic reduction with excellent stability; claimant was transferred to the recovery room in stable condition (Department Exhibit #1, pgs 11 and 12).

(5) At the time this injury occurred claimant was a home health aide/chore provider but she has remained unemployed since.

(6) Prior to providing chore services claimant was co-owner of a local motel involved in all phases of the business until the economy's downturn forced them to close in July, 2006 (Department Exhibit #1, pg 100).

(7) Claimant's two week post-surgical fracture notes indicate she was progressing quite well and she was already driving despite the doctor's recommendation against it (Department Exhibit #1, pg 20).

(8) Claimant participated in the standard physical therapy sessions associated with her injury.

(9) Seven months after the injury claimant's October 16, 2007 progress evaluation states in relevant part:

This patient has progressed in the past weeks in a dramatic fashion. She is now independent in gait, transfers, IADLS and recreational activities. She will self limit at times due to fear of re-injury, however, I feel that this will resolve with experience and practice at home. She may benefit from continued therapy but she is certainly progressing well enough on her own with her own activities. I am confident that she will make a full functional

recovery either way. Her fear and anxiety do limit her ability to progress at a more rapid rate (Department Exhibit #1, pg 8).

(10) Claimant told the physical therapist that day she was having no pain but she did have aches after a busy day on her feet; she reported feeling 75% recovered, but also voiced fear/anxiety over the possibility of re-injury (Department Exhibit #1, pg 8).

(11) On October 29, 2007, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA).

(12) In December, 2007, the department denied this application and claimant filed a hearing request dated January 10, 2008.

(13) On January 16, 2008, claimant was to begin self-initiated counseling at [REDACTED] but the therapist was sick that day so she did not get an intake assessment done until January 24, 2008 (Department Exhibit #1, pgs 114-125).

(14) Claimant's reported major stressors were documented as a recent bankruptcy filing and worry about losing her house, truck, cable and phone since she had no income (Department Exhibit #1, pg 131).

(15) Claimant was diagnosed with Major Depressive Disorder (single, moderate) and the [REDACTED] treatment plan included teaching her coping skills and encouraging her to explore constructive options (Department Exhibit #1, pg 129).

(16) Claimant was started on an antidepressant ([REDACTED] daily); she reported reduction/stabilization of her depression at her May 15, 2008 disability application denial hearing.

(17) Claimant also takes prescription strength [REDACTED] for residual right ankle pain and other pain complaints.

(18) A medical examination note dated April 22, 2008 addresses claimant's left foot complaints (Department Exhibit #1, pgs 135 and 136).

(19) Claimant was found to have a mild flat foot with overpronation and a slight amount of dorsiflexion at her MP joint on the 5th toe (Department Exhibit #1, pg 135).

(20) Claimant's right ankle x-rays taken that day revealed spur formations at the Achilles tendon attachment and at the plantar fascial origin with some mild arthritic changes in the midfoot; wearing a newer pair of shoes was recommended, and if claimant had no improvement, custom orthotics were to be considered (Department Exhibit #1, pg 134).

(21) Claimant's only other documented health conditions are high blood pressure and asymptomatic hypothyroidism, both adequately controlled with current prescription medications.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 March, 2007 (See Finding of Fact #5 above).

At Step 2, claimant's right ankle fracture residuals have left her with some range of motion limitations and mild arthritis pain. However, it must be noted no severe mental impairments have been shown, and claimant's post-injury arthritis appears fully capable of adequate pain management with the analgesic currently being prescribed.

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 right ankle residuals meet the *de minimus* level of severity and duration required for further analysis. Claimant's left flat foot and plantar fasciitis/spurs are non-severe, as they are also capable of adequate pain management as long as the recommended treatment is followed (See Finding of Fact #20 above). Consequently, the analysis must continue.

At Step 4, the record supports claimant's contention she is physically incapable of returning to the medium exertional job duties associated with providing chore services (e. g., excessive standing, walking, lifting, etc.). As such, the 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 was 53 years old at injury onset and 54 years old at application filing. She has a high school education with one year

of college and a history of medium exertional unskilled work. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retained the residual functional capacity at all times relevant her disputed application to perform at least light work, as that term is defined above.

Claimant's biggest barriers to employability appear to be her displacement from her chore services profession, in combination with her lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities. Claimant is not disabled under the disability definitions, because at all times relevant she was capable of returning to other light work, as directed by Medical-Vocational Rule 202.13. As such, her 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 determined claimant was not disabled by MA/SDA standards when processing her October 29, 2007 application.

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 16, 2009

Date Mailed: July 20, 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.

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