

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: 2008-15315
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 25, 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 June 25, 2008. Claimant personally appeared and testified.

ISSUE

Did the department 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, 53-year-old smoker with a general equivalency diploma (GED) and a semi-skilled work history as a hairdresser; her other relevant work experience was as a customer service agent for [REDACTED] until March, 2008, when she was fired after an extensive medical leave (Department Exhibit #1, pgs 11 and 12).

(2) Claimant resides with her elderly mother in [REDACTED].

(3) On April 19, 2007, claimant applied for disability-based MA/SDA alleging her combined physical and mental impairments prevent her from engaging in any type of substantial gainful work activity.

(4) Claimant's April 26, 2006 lumbar spine MRI scan reveals left foraminal and left lateral disc herniations at L3-4 and L4-5 with mild left foraminal encroachment at the L4-5 level and a degree of paraspinal muscle atrophy is also noted.

(5) Claimant has not had surgical correction of these disc impairments, but she has been treated conservatively at [REDACTED] for several years.

(6) An updated CT scan done on August 3, 2006 opines disc space disruption or thinning of claimant's annulus fibrosis exists at L5-S1 but notes no disc herniation or spinal stenosis at that level, in direct contrast to the MRI scan done approximately three months earlier (Department Exhibit #1, pgs 32 and 33)(See also Finding of Fact #4 above).

(7) This matter was further investigated via an abnormal April 12, 2006 EMG study which confirms right lumbosacral radiculopathy at the L4-5 and L5-S1 levels consistent with the lumbar spine MRI scan (Department Exhibit #1, pg 30).

(8) Claimant's [REDACTED] specialist completed a Medical Examination Report (DHS-49) dated April 27, 2007 which confirms lumbar spondylosis with pervasive degenerative disc disease; a cane was medically required for ambulation and claimant was assessed at that time with a less than sedentary residual functional capacity (Department Exhibit #1, pgs 21 and 22).

(9) By August, 2007, claimant had progressed to using a walker, and when she attended an independent psychiatric evaluation in October, 2007 she was using a wheelchair (Department Exhibit #1, pg 6).

(10) Claimant stated she could walk unassisted, but very slowly and only for limited distances (Department Exhibit #1, pg 6).

(11) Claimant presented with a severely blunted affect and appeared depressed, anxious, suspicious and fearful (Department Exhibit #1, pg 7).

(12) Claimant's Global Assessment Function (GAF) was assessed at 30 and she was diagnosed with Major Affective Disorder and Obsessive Compulsive Personality based on the psychiatrist's opinion she was minimizing her psychiatric difficulties while exaggerating her physical concerns (Department Exhibit #1, pg 7).

(13) Claimant's mother helps her dress, makes her meals, does her laundry and all the household chores; claimant complained that she ought to be taking care of her mother, not vice versa (Department Exhibit #1, pg 7).

(14) Claimant receives ongoing outpatient psychiatric services approximately once a month; her psychiatrist would like her to go three times a week to chronic pain group therapy sessions but claimant does not drive and she cannot get a ride (Department Exhibit #1, pgs 6 and 55).

(15) Claimant's ongoing psychiatrist prescribed [REDACTED] for depression with little noted improvement in her condition (Department Exhibit #1, pg 6)(See also Finding of Fact #12 above).

(16) Claimant's pain medications include daily [REDACTED] [REDACTED] with minimal improvement in claimant's daily intractable pain levels.

(17) An independent functional capacity assessment done on January 4, 2008 is consistent with all her other treating professionals' opinions, summarizing as follows:

[Claimant] completed or started the following tests:

- Sitting during interview session of 25 minutes, reviewing current status and five-page form.
- Isometric tests for both upper extremities (seven each side).
- Right upper extremity lifting/carrying of 5# tote box and 7# bucket.
- Seated cardiovascular endurance test for 15 minutes on the [REDACTED].
- Distance walking of up to 430 ft.

After approximately 1 hour 35 minutes into the evaluation/physical activities [claimant] informed therapist that she needed to take her medication and lie down. [Claimant] informed therapist that she wanted to stop or terminate the test because she was in too much pain (pain level of 10/10).

[Claimant's] overall endurance and strength for upper and lower extremities is very weak. [Claimant] did not complete all the sub-tests required on the functional capacity evaluation. What she did complete placed in the sedentary work category range below 10 lbs occasionally. Therapist encouraged [claimant] to try to perform demonstrated activities to increase overall endurance and strength. Therapist provided verbal information and demonstration on activities while in a seated position (See Report, pg 3).

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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant has not been employed since March, 2008 (See Finding of Fact #1 above).

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical and mental limitations upon claimant's ability to perform basic work activities.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant cannot return to her past relevant work. This finding is based on an analysis of all of the consistent opinions about claimant's condition issued by her treating professionals.

In the fifth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as “what can you still do despite your limitations?” 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability.

Richardson v Secretary of Health and Human Services, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant’s extensive medical record and the Administrative Law Judge’s personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant’s exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant’s age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant’s limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Under these circumstances, claimant is disabled according to MA and SDA program rules. Consequently, the department's denial of her April 19, 2007 application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant does not meet the MA/SDA disability standards necessary for application approval.

Accordingly, the department's decision is REVERSED and it is Ordered that:

- (1) The department shall process claimant's disputed application and shall award her all of the benefits to which she may be entitled, as long as she meets the remaining financial and non-financial eligibility factors.
- (2) The department shall review claimant's condition for improvement in July, 2012 unless she receives a Social Security disability approval by that time.
- (3) The department shall obtain updated evidence from all claimant's treating sources regarding her continued progress and prognosis at review.

(4) The department shall send claimant to an independent functional capacity evaluation at the time of the review to compare her current status with the evaluation done in January, 2008.

/s/

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

Date Signed: August 4, 2009

Date Mailed: August 4, 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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