

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: 2008-15474

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2008

Muskegon 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 10, 2008. Claimant and her father 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 single, 27-year-old two pack per week smoker with a general equivalency diploma (GED) who lives alone in the upstairs apartment (14 steps) of a house her father owns in [REDACTED].

(2) Claimant's past relevant work is in restaurant waitressing/kitchen work; her most recent job as of her June 10, 2008 hearing date was 10-15 hours weekly in a family-owned restaurant, but she left there in May, 2008, due to reported leg, hip, back and arm pain.

(3) On November 16, 2007 claimant applied for disability-based MA/SDA alleging chronic pain secondary to an on-the-job injury in 2001 at [REDACTED] causes her to be unable to engage in any type of substantial gainful work activity.

(4) Claimant stands approximately 5'4" tall and weighs approximately 160 pounds; she is right hand dominant.

(5) Claimant is independent in self-cares (bathing, grooming, dressing, feeding); additionally, she needs no assistive devices for ambulation and she has a valid driver's license.

(6) Claimant requested a record extension at hearing to submit updated medical test results; that request was granted.

(7) A lumbar spine MRI scan dated March 6, 2008 evidences no focal disc herniations, central canal stenosis or other acute processes; however, early degenerative disc changes were seen at L3-4 and L4-5 with borderline narrowing and disc bulging at L4 on the left (Client Exhibit A, pg 241).

(8) A right hip MRI scan dated February 16, 2006 was unremarkable overall, except for prominent serpiginous veins deep in claimant's right pelvis, assessed as follows:

This could represent normal venous structures in this young female, although prominent and dilated veins could produce pelvic congestive syndrome. Clinical correlation is suggested. There are no additional findings otherwise (Client Exhibit A, pg 239).

(9) Claimant's medical records are positive for extensive Emergency Room (ER) visits (Department Exhibit #1, pgs 1-227).

(10) A March 18, 2007 ER report notes claimant fell the night before while drinking on her birthday and woke up with right elbow pain; the x-rays taken that day were normal (Department Exhibit #1, pgs 215-218).

(11) In April, 2007, a left buttock abscess was irrigated in ER and claimant was sent home on short-term antibiotics and [REDACTED] for pain while healing (Department Exhibit #1, pgs 219-221).

(12) The clinical review of claimant's other systems was negative (Department Exhibit #1, pg 221).

(13) Claimant's October, 2007 urine tests were all within normal range, except she tested positive for [REDACTED] (Department Exhibit #1, pgs 23 and 24).

(14) As of claimant's June 10, 2008 hearing date, she noted her treating PAC at [REDACTED] was prescribing [REDACTED] and [REDACTED] for her reported pain (Client Exhibit A, pg 242).

(15) Claimant testified she has been diagnosed with "fibromyalgia" in the past, but none of her medical records submitted to date (from 2002 forward) evidenced this impairment.

(16) Claimant's November 21, 2002 physical therapy discharge summary indicates her attendance was poor; she voluntarily decided to discharge herself from therapy when contacted that day (Department Exhibit #1, pg 12).

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 relevant 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 medical 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 is not currently working, and she has not been employed since she left the family restaurant in May, 2008 (See Finding of Fact #2 above). 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). This step examines the physical and mental demands of the work done by the applicant in the past.

In this case, claimant reported her restaurant work required frequent lifting and carrying of 30 to 40 pound trays with excessive walking, standing, lifting, etc. Again, ruling any ambiguities in claimant's favor, this Administrative Law Judge finds claimant would not be physically capable of meeting the demands of her former restaurant work on a sustained basis. Consequently, the analysis will 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 of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence presented, this Administrative Law Judge finds Medical-Vocational Rule 202.20 directs a finding of not disabled.

In reaching this conclusion, this Administrative Law Judge considered claimant's age, education, work history and documented impairments (mild osteoarthritis of the lumbar spine and possible pelvic congestive syndrome). She finds insufficient medical evidence to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in other work, specifically, light unskilled work as that term is defined at 20 CFR 416.967(b). Consequently, when taken as a whole, the evidence in this file fails to meet the regulatory requirements necessary to qualify for disability-based MA or SDA.

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 November 16, 2007 MA/SDA application, based upon 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 27, 2009

Date Mailed: July 29, 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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