

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: 2008-16104

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 10, 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 November 10, 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 50-year-old smoker with a general equivalency education (GED), currently separated from her spouse and living independently in [REDACTED] (Department Exhibit #1, pgs 8 and 9).

(2) Claimant has an unskilled work history; she last performed housekeeping/laundry duties at a nursing home until February 2007 but she quit do to failing health and she has remained unemployed since.

(3) On December 18, 2007, claimant applied for disability-based MA/SDA; when that application was denied, she filed a timely hearing request.

(4) A Medical Examination Report (DHS-49) and a Medical Needs form (DHS-54A) submitted by claimant's treating doctor that month (12/07) indicate claimant is anemic, has fibroid tumors, asthma and "cardiac problems" which needed further assessment (Department Exhibit #1, pg 12).

(5) This doctor assessed claimant's residual functional capacity at less than sedentary and represented that she needed help with laundry, housework, shopping and meal preparation at that time (Department Exhibit #1, pg 12).

(6) Subsequently, claimant's cardiac condition was fully assessed by a cardiac specialist via echocardiogram; she was found to have Class III Congestive Heart Failure (CHF) with chronic shortness of breath (See New Medical Evidence submitted post-hearing on December 12, 2008).

(7) Claimant stands approximately 5'1" tall and is medically obese at approximately 190 pounds (See New Medical Evidence submitted post-hearing on October 8, 2009).

(8) Claimant's September 26, 2009 pulmonary function test results confirm lowered test values and her corresponding physical examination verifies a systolic heart murmur, recurrent orthopnea and chronic paroxysmal nocturnal dyspnea, resulting in unrestful sleep and ongoing daytime fatigue (See New Medical Evidence submitted post-hearing on October 8, 2009).

(9) When claimant's New Medical Evidence was submitted to the department's State Hearing Review Team (SHRT) for a post-hearing review, they determined claimant was disabled starting on her 50th birthday, but not earlier (See SHRT Decision dated October 14, 2009).

(10) The medical evidence presented verifies all claimant's symptoms were present at the same level of severity before she turned 50 years of age on [REDACTED], as were present on her 50th birthday and beyond.

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.

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).

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).

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 2007.

At Step 2, claimant's combined diagnosed conditions are of sufficient duration to pass the *de minimus* hurdle defined by Higgs v Bowen, 880 F2d 860,862 (6th Cir, 1988).

At Step 3, the Cardiac Listings at 4.00A state in relevant part:

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). Unless the claim can be decided favorably on the basis of the current evidence, a longitudinal record is still important because it will provide information about such things as the ongoing medical severity of the impairment, the degree of recovery from cardiac insult, the level of the individual's functioning, and the frequency, severity, and duration of symptoms. Also, several listings include a requirement for continuing signs and symptoms despite a regimen of prescribed treatment. Even though an individual who does not

receive treatment may not be able to show an impairment that meets the criteria of these listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled because of a limited residual functional capacity...

...Therefore, in any case in which an individual has a medically determinable impairment that is not listed, or a combination or impairments no one of which meets a listing, we will make a medical equivalence determination. Individuals who have an impairment(s) with a level of severity which does not meet or equal the criteria of the listings may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful activity. Evaluation of the impairment(s) of these individuals should proceed through the final steps of the sequential evaluation process (or as appropriate, the steps in the medical improvement review standard).

At Step 3, the Pulmonary Listings at 3.00I incorporate the effects of obesity on a disability determination in the following way:

1. *effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

Furthermore, Social Security Ruling 02-1p states in relevant part:

...Because there is no listing for obesity, we will find that an individual's obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of co-existing or related impairments to the extent that the combination of impairments meets the requirements of a listing.

This is especially true of musculoskeletal, respiratory, and cardiovascular impairments...

All of the above citations require the trier-of-fact to assess an applicant's claim using the sequential evaluation process if severity is met, given the applicant's combined existing diagnoses. Consequently, this analysis will continue.

At Step 4, claimant worked as a housekeeping/laundry attendant until February 2007. This job can be classified as medium exertional work activity under the governing definition set forth at 20 CFR 416.967(c). The medical evidence of record supports a conclusion that claimant is now incapable of returning to that level of exertion on a sustained basis. As such, an analysis of her residual functional capacity at Step 5 is required.

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 you 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 medical records and an objective assessment regarding the credibility of claimant's testimony at hearing, this Administrative Law Judge finds her morbid obesity, when combined with her cardiac and pulmonary impairments and their attendant symptoms render her incapable of performing a full range of even sedentary work on a regular and continuing basis. These restrictions were present not only after age 50, but also at all times relevant to her December 18, 2007 application. This finding is consistent with claimant's treating physicians' assessments, which must be given due deference. Additionally, this Administrative Law Judge finds the department failed to present any vocational evidence to establish claimant had the residual functional capacity to perform any substantial gainful work activity, and that, given claimant's age (49), education and work experience, there were significant numbers of jobs in the national economy which she could perform despite her physical limitations.

Accordingly, this Administrative Law Judge concludes claimant was disabled for MA/SDA eligibility purposes at all times relevant to her December 18, 2007 MA/SDA application, contrary to SHRT's opinion on the recommended decision they issued on October 14, 2009 (See Finding of Fact #9 above). Consequently, that decision cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides SHRT erred in determining claimant was not disabled by MA/SDA disability standards before her 50th birthday.

Accordingly, the department's denial of claimant's December 18, 2007 MA/SDA application is REVERSED, and this case is returned to the local office for the following:

(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 factors necessary to receive them.

(2) The department shall review claimant's condition for improvement in October 2012, unless she is approved eligible for Social Security disability benefits before then.

SO ORDERED.

/s/

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

Date Signed: October 19, 2009

Date Mailed: October 19, 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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