

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: 2008-21906

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 21, 2008

Clinton 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 August 21, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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, 48-year-old female who is right hand dominant; she stands 5'4" tall and is medically obese at 180 pounds (BMI=30.9)(Department Exhibit #1, pgs 22 and 25).

(2) Claimant completed 11th grade and her work history is in unskilled positions such as fast food, retail sales and drug store beauty consulting; she was fired from her last job in July, 2007 and she has been unemployed since then (Department Exhibit #1, pg 21).

(3) Claimant resides with her boyfriend in [REDACTED]; she has a valid driver's license and she is independent in all personal care activities (Department Exhibit #1, pg 23).

(4) On January 30, 2008, claimant applied for MA alleging migraine headaches, fibromyalgia and depression/panic attacks as her disabling conditions.

(5) Claimant reported at the hearing she began participating in outpatient counseling at [REDACTED] after moving to [REDACTED] from [REDACTED] in June, 2006.

(6) As of the hearing date, claimant reported she was taking [REDACTED] for symptom management.

(7) Claimant's medical records verify a remote hospitalization for a few days in 1985 because she was feeling overwhelmed by situational stressors (husband laid-off, medical bills, brother who was severely burned)(Client Exhibit A, pg 206).

(8) At that time, claimant was diagnosed with Simple Phobic Disorder and Obsessive-Compulsive Disorder (Client Exhibit A, pg 205).

(9) By 1998, claimant's psychological diagnoses included Personality Disorder, Alcohol Dependence and Major Depression, but claimant denied drinking abusively (Client Exhibit A, pgs 123, 182 and 183).

(10) In 1998, claimant was hospitalized briefly for a medication overdose denying it was a suicide attempt; at discharge, she was feeling fine (Client Exhibit A, pg 181).

(11) Claimant reports she was diagnosed with fibromyalgia in 2000, but there are no medical records in her file confirming this diagnosis, and an updated rheumatology consultation (7/9/08) states in relevant part:

She [reports] diffuse soft tissue pain everywhere and says that she cannot even have sex with her boyfriend because her pelvis hurts too much. She has had no sensitivity or pleurisy, no joint pain per se, and no real symptoms concerning for an autoimmune disease such as lupus, but she does have a history of pulmonary blebs in the past for which she has had lung resection (Client Exhibit A, pg 149).

(12) As of claimant's August 21, 2008 hearing date, she was taking a low dose of [REDACTED] and a [REDACTED] for symptom management (Client Exhibit A, pg 148).

(13) In October, 2007, claimant underwent an Emergency Room CT scan for reported pleuritic pain in her right lateral rib cage with radiation to her back; this scan revealed no sign of PE or pneumothorax (Client Exhibit A, pg 144).

(14) In March, 2006, claimant underwent Emergency Room chest x-rays for reported chest pain; there was no evidence of acute infiltrates, congestive heart failure (CHF) or pneumothorax; additionally, claimant's cardiac marker panel was negative (Client Exhibit A, pg 143).

(15) Claimant's 2003 medical records indicate she underwent a sleep study because she reported having excessive daytime somnolence in the past several years; this sleep study detected no evidence of sleep pathology (Client Exhibit A, pg 116).

(16) In 2005, claimant was referred to physical therapy in [REDACTED] for reported low back pain; she self-discharged with partially met expectations (Client Exhibit A, pg 103).

(17) Claimant's December, 2007 pulmonary function test indicates some of her reported shortness of breath could be due to physical deconditioning; weight loss and initiation of an exercise program were suggested (Department Exhibit #1, pg 10)(See also Finding of Fact#1 above).

(18) A Medical Examination Report (DHS-49) completed on February 22, 2008 (one month after disability application filing in January, 2008) states claimant's clinical examination revealed no abnormalities in any major systems; stability in her condition and no physical limitations also were noted (Department Exhibit #1, pgs 24 and 25).

(19) Claimant stated at the hearing she was hospitalized in December, 2007 and January, 2008 for migraine headache episodes.

(20) The February 22, 2008 Medical Examination Report (DHS-49) referenced in Finding of Fact #18 indicates claimant's [REDACTED] prescription was continued for her reported headache pain (Department Exhibit #1, pg 24).

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).

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 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.

...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).

...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).

...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).

...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 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.

...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).

...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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(4).

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 20 CFR 416.929(c)(4).

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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable mental or physical impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA coverage she seeks because she has not presented any objective medical records to establish the presence of a physical or mental condition supportive of a reason for her severe, chronic, debilitating complaints. In fact, all of the objective medical tests submitted are within normal range. Likewise, claimant is noted to be fully capable of all self cares and she is physically/mentally capable of driving.

Additionally, 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 pain can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant's current prescription medications can reasonably be expected to provide adequate symptom control for her diagnosed conditions when taken as prescribed. Consequently, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's January 30, 2008 MA 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 is not disabled by MA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: June 4, 2009

Date Mailed: June 5, 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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