

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: 2008-30197

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Kent 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, an in-person hearing was held on March 25, 2009. 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 single, 28-year-old, high school educated, former pack per day smoker who delivered two biological children neither of whom reside with her; claimant's biological family history also is unknown because she was adopted (Department Exhibit #1, pgs 92, 113, 135, 140 and 248).

(2) Claimant has an unskilled work history; she was last employed as a part-time nanny to three young children in 2008 (Department Exhibit #1, pgs 73, 92 and 251).

(3) Claimant's medical records are positive for a longstanding history of endometriosis with severe dysmenorrhea and dyspareunia; additionally, in 2003 she underwent gall bladder removal surgery (Department Exhibit #1, pgs 56, 109, 135, 140 and 251).

(4) Claimant stands approximately 5'7" tall and weighs approximately 180 pounds; she is left hand dominant (Department Exhibit #1, pg 222).

(5) On March 20, 2008, claimant had an intramuscular gluteal injection of [REDACTED] to address her chronic abdominal pain complaints (Department Exhibit #1, pg 173).

(6) Five days later, claimant was in a local emergency room reporting debilitating right buttock pain with radiation into her right lower extremity (Department Exhibit #1, pg 173).

(7) The examining physician recommended anti-inflammatories as well as [REDACTED] for pain management, but he felt a specialty referral was not necessary because claimant demonstrated preserved neurologic function throughout all her motor, sensory and reflex areas; follow-up was encouraged if the symptoms persisted (Department Exhibit #1, pgs 173 and 174).

(8) Prescriptions were written for [REDACTED] in April, 2008, and [REDACTED] in May, 2008, but as of claimant's March, 2009 hearing date, she was only using over-the-counter Tylenol for pain management because she does not have the financial means necessary to obtain prescription medications.

(9) However, in July, 2008, claimant was able to undergo an independent neurological consultative examination where she was diagnosed with Reflex Sympathetic Dystrophy (RSD).

(10) Claimant's persistent symptom is pervasive, burning pain so severe she is unable to comfortably allow clothing, bed covers or even the cat to brush against her skin.

(11) Claimant relies on daily help with self-cares like showering and dressing; additionally, she no longer engages in a normal daily living routine and she is unable to get restful sleep secondary to her chronic pain.

(12) Claimant continues to be rejected from further specialist treatment because she has no financial means to obtain it.

(13) In April, 2008, claimant was referred to mental health counseling because she was tearful and emotionally upset; the examining doctor opined claimant's personal stress and anxiety is playing a role in her reported pain levels (Department Exhibit #1, pg 252)(See also Finding of Fact #1 above).

(14) When claimant was interviewed at the local office in conjunction with the processing of her February 28, 2008 MA/SDA application, her caseworker noted:

Client walked quite slowly into the interview area. She seemed to be in much pain. At the interview she kept holding her stomach and had severe pain to the point she held her head down on the table. A couple of times she made painful noises when the pain hit her. Nothing I could observe but you could see the pain in her face (Department Exhibit #1, pg 79).

(15) As of claimant's disability disallowance hearing date (3/25/09), she was using a walker to assist in ambulation; her gait was slow and labored; her presentation was identical to that observed by her caseworker last year.

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).

"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.

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.

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).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone.... 20 CFR 416.945(e).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

...Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms.... 20 CFR 416.929(c)(3).

...Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account...in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(3).

...We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons.... 20 CFR 416.929(c)(3).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 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).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

In claimant's case, the pain she describes is consistent with her medical and social history, as well as with her current diagnosis (RSD). Consequently, great weight and credibility must be given to all of the testimony presented in this regard.

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 is not currently employed and she has not been gainfully employed since 2006 (Department Exhibit #1, pg 92).

At Step 2, the objective medical evidence clearly shows claimant's intractable pain has lasted, or can be expected to last the necessary durational periods required to continue this inquiry into her alleged disability.

At Step 3, claimant's current medical records do not appear to rise to the level necessary to be specifically listed as disabling by law; consequently, an analysis of her ability to engage in her past relevant work is required.

At Step 4, it is clear claimant cannot perform her past relevant work due to her non-exertional pain limitations. Consequently, an analysis of Step 5 is required.

At Step 5, claimant's age, education, work experience and residual functional capacity are assessed in relation to the guidelines set forth in the federal regulations. However, these rules do not apply in cases where an individual is found to have no residual functional capacity because he or she cannot perform sedentary work as that term is defined at 20 CFR 416.967(a).

Under the facts and circumstances presented by this case, claimant has shown, by clear and convincing documentary evidence and credible testimony, that her non-exertional pain limitations have been and will continue to be severe enough to prevent her from engaging in even sedentary work for the requisite durations. Consequently, claimant meets the MA/SDA

durational criteria and disability standards cited above. As such, the department's finding to the contrary 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 is not currently legally disabled.

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

(1) The department shall process claimant's February 28, 2008 MA/SDA application, and shall award her all 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 November, 2009.

(3) The department shall obtain updated medical evidence from claimant's treating mental health provider(s), neurologist(s), pain clinic specialist(s), beginning in July, 2008 (with her RSD diagnosis) and continuing through her review month (11/09).

(4) The department also shall schedule claimant for independent consultative psychological and physical examinations at the time of review.

(5) CLAIMANT SHOULD BE AWARE THAT HER FAILURE TO FOLLOW ALL TREATMENT RECOMMENDATIONS MAY RESULT IN THE DENIAL OF BENEFIT CONTINUATION AT REVIEW.

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

Date Signed: March 30, 2009

Date Mailed: March 31, 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

cc:

