

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: 2008-31017
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
St. Clair 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 17, 2009. Claimant personally appeared and testified. She was assisted by [REDACTED], a patient advocate from [REDACTED]

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 divorced, 55-year-old high school graduate and certified medical assistant who has been blind in her right eye since birth.

(2) Nevertheless, claimant is a licensed driver and she worked as a group home manager/supervisor for approximately seven years until April 30, 2008; prior to that, claimant was a medical assistant (Department Exhibit #1, pg 25).

(3) Claimant reports a remote history of multiple bowel resections for recurrent small bowel obstructions (most recently in 2004); this condition is currently stable (Department Exhibit #1, pg 4).

(4) Claimant stands approximately 5'1" tall and weighs approximately 124 pounds; she is a non-smoker/non-drinker and she is right hand dominant.

(5) Claimant is not engaged in any mental health treatment or counseling; however, her family doctor has prescribed [REDACTED] and [REDACTED] for self reported depression/anxiety.

(6) Claimant's high blood pressure is adequately controlled with [REDACTED] and [REDACTED] (a diuretic)(Department Exhibit #1, pgs 4, 5 and 28).

(7) On May 7, 2008, claimant underwent a two level lumbar fusion (L4-5/L5-S1) with PEEK cage and pedicle screw re-enforcement to address lumbar spondylolisthesis and intervertebral degenerative disc disease secondary to post laminectomy syndrome caused by two prior lumbar laminectomies (Department Exhibit #1, pgs 6 and 7)(See also Finding of Fact #2 above).

(8) Claimant spent a couple weeks in subacute rehab ([REDACTED]) and was discharged home (living with niece) for visiting nurse follow-up services (Department Exhibit #1, pg 5).

(9) Claimant was rehospitalized briefly in June, 2008 with symptoms which included nausea/vomiting/low grade fever; her urinalysis detected a urinary tract infection which was

treated to full resolution with [REDACTED] and [REDACTED] (standard antibiotics)(Department Exhibit #1, pg 4).

(10) While hospitalized, a lumbar spine MRI was taken to address claimant's low back and right/left hip pain complaints; the findings were considered consistent/satisfactory, in light of claimant's recent fusion with no evidence of acute inflammatory process, fracture or spinal cord compromise (Department Exhibit #1, pg 12).

(11) On July 14, 2008 (two months post fusion), claimant's neurosurgeon verified claimant as being in temporary disability status with return to work approved effective September 12, 2008 (Department Exhibit #1, pg 27).

(12) Claimant could not return to her past job because she was fired while she was hospitalized (Department Exhibit #1, pg 25)(See also Finding of Fact #2 above).

(13) In November, 2008, claimant spent three days in the hospital because she fell off a kitchen chair (Client Exhibit A, pg 1).

(14) None of the objective medical tests performed (abdominal sonography, lumbar/chest/pelvic/abdominal CT scans, thoracic spine x-rays and right rib/right hip x-rays) showed any evidence of fracture, dislocation, subluxation or misalignment (Client Exhibit A, pgs 5, 7, 9, 11 and 12).

(15) As of claimant's March 17, 2009 hearing date, claimant was using [REDACTED] for pain management, in addition to the other prescription medications listed in Finding of Fact #5 and #6 above).

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

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).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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 April 30, 2008.

At Step 2, claimant's residuals from her most recent lumbar fusion on May 7, 2008 have left her with some range of motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's pain appears fully capable of adequate management with current prescription medication, given the objective medical test results presented in combination with her neurosurgeon's opinion.

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 symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed lumbar residuals meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's impairment, standing alone or combined with her high blood pressure and self reported

depression, is severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the required sequential evaluation examines an applicant's ability to return to his or her past relevant work. In this case, this Administrative Law Judge finds, from the medical evidence of record, claimant was (and remains) physically and mentally capable of returning to a group home supervisory position (sedentary/light exertional activity) before the durational periods necessary for disability status to attach could be met. Consequently, claimant's disputed application must remain denied based on ability to return to past relevant work.

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/SDA 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: May 4, 2009

Date Mailed: May 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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