

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: 2008-11824
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 24, 2008
Genesee 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 April 24, 2008. Claimant personally appeared and testified. She was assisted by

[REDACTED]

ISSUE

Did the department properly deny claimant's September 13, 2007 and November 27, 2007 Medicaid (MA)/retro-MA and State Disability Assistance (SDA) applications based on the lack of a legally disabling condition?

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, 45-year-old smoker with an extensive polysubstance abuse history (heroin, cocaine, marijuana, alcohol) who stands 5'9" tall and weighs 214 pounds,

according to EEG testing done on April 3, 2007 (test results: normal)(Department Exhibit #1, pgs 322 and 331; New Medical Evidence received May 12, 2008, pg 33).

(2) At claimant's April 24, 2008 hearing she reported a current weight of 160 pounds.

(3) At claimant's April 24, 2008 hearing she also reported she attended the [REDACTED] and obtained a paralegal degree in 1993, but claimant's medical records indicate she dropped out of high school prior to completing ninth grade and obtained her GED in prison during an eight year incarceration between 1990 and 1998 (Department Exhibit #1, pgs 11 and 290).

(4) Claimant has a sporadic, unskilled work history in temporary factory jobs, most recently in May, 2007 (Department Exhibit #1, pgs 257 and 290).

(5) Claimant has a history of bilateral lower extremity deep vein thrombosis (DVT) earliest verified for treatment in 1999, per medical records submitted at hearing ([REDACTED]) (Department Exhibit #1, pgs 329-335).

(6) Claimant's reactive toxicology screen on admission in 1999 was positive for cocaine, just as it was in February, 2008, despite her testimony at hearing that she had been in full remission for 28 months (Department Exhibit #1, pg 329; New Medical Evidence received May 12, 2008, pg 19; Client Exhibit A, pgs 2 and 3).

(7) Claimant's lower extremity DVT is secondary to IV drug abuse using her legs as injection sites (Department Exhibit #1, pgs 289, 322 and 329).

(8) Claimant's lower extremity DVT has been managed with standard prophylactic medications (e. g., [REDACTED]).

(9) Claimant initially applied for disability-based MA on July 6, 1999 and July 2, 2007; both these applications were denied (Department Exhibit #1, pgs 64 and 320).

(10) On September 13, 2007 and November 27, 2007, claimant filed two more applications; when they were denied her authorized representative (██████████) requested a hearing.

(11) Claimant alleges disability based on pervasive, self-reported total body pain, allegedly compromised mental function, and the medically managed DVT referenced above.

(12) In July and August 2006, claimant underwent extensive psychological testing courtesy of the ██████████ when she was again incarcerated on a felony charge (Department Exhibit #1, pgs 358-360).

(13) Claimant alleged severely impaired memory; however, her test results showed mild impairment of cognitive function when compared to estimated function before she suffered a closed head injury (as a pedestrian struck by a car) in 2002 (Department Exhibit #1, pgs 359 and 360).

(14) In February, 2007 (after prison release) claimant underwent another independent psychological evaluation (Department Exhibit #1, pgs 347-351).

(15) The independent psychologist noted:

She is on no medication at the present time. (Later on there were many complaints about memory and claims of forgetfulness which were clearly of an exaggerated nature and not consistent with the capacity to remember, retain, etc. demonstrated during the examination itself (Department Exhibit #1, pg 347).

(16) As of May, 2008, claimant was taking ██████████ to address her pain complaints and a low dose of ██████████ to address her self-reported anxiety, in addition to the prophylactic blood thinners which likely will be required for life (New Medical Evidence received May 12, 2008, pg 2)(See also Finding of Fact #5 and #8 above).

(17) On February 20, 2008, claimant was admitted to [REDACTED] alleging generalized body aches, nausea, chills and headaches (Client Exhibit A, pg 32)(See also Finding of Fact #6 above).

(18) Additionally, claimant's head CT scan, abdominal ultrasound, abdominal x-rays, chest x-ray and EEG revealed no abnormalities (Client Exhibit A, pgs 17-26 and 30-31).

(19) Claimant's remote surgical history is positive for an open reduction/internal fixation (ORIF) of her left ankle to repair an undisplaced medial malleous fracture in January, 2002, secondary to the pedestrian/car accident referenced in Finding of Fact #13 above and a right ovarian cyst removal in June, 2007 (Department Exhibit #1, pgs 262, 264, 274, 276 and 278).

(20) Claimant uses a cane on occasion, per an independent physical examination conducted on February 10, 2007 (Department Exhibit #1, pg 342).

(21) The independent consulting physician also indicated claimant has lumbar spine degenerative disc disease per self-report; however, no x-rays, lumbar spine MRI scan or other objective medical tests were presented to verify the presence or severity of this alleged condition (Department Exhibit #1, pg 342)(See also Finding of Fact #16 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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

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).

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 at Step 1, because she has not been gainfully employed since 2007 (See Finding of Fact #4 above).

At Step 2, claimant's verified physical impairments (DVT and post-traumatic arthritis in her left ankle secondary to fracture), in combination, have left her with some range of motion limitations and pain. However, it must be noted no cognitive impairments have been shown despite claimant's attempt to portray otherwise. Furthermore, claimant's post-traumatic arthritis and DVT appear capable of adequate symptom management as long as the current medication schedule is maintained.

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 physical impairments 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 diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record reveals claimant has a history of sporadic, temporary light factory work which required excessive standing. Claimant's ongoing DVT can reasonably be expected to prevent her from returning to this type of job because it may exacerbate her reported pain and/or cause excessive flair-ups of her DVT disease; consequently, the analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a high school equivalency education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least sedentary work, as that term is defined above. Claimant's biggest barriers to employability appear to be her lack of any longstanding connection to the competitive work force in combination with her desire to pursue disability benefits instead. Lastly, this record supports a finding that claimant is still actively engaging in substance abuse despite her testimony to the contrary, which this Administrative Law Judge finds to be completely lacking in credibility.

The current federal regulations are clear. Drug addiction and/or alcoholism disqualifies an applicant from disability benefits if those conditions are a material, contributing factor to his or her inability to engage in substantial gainful activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance

abuse/dependency (PL 104-121). "Material to the determination" means that, if the applicant stopped using drugs or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds that long-term abstinence from substance abuse, in combination with adherence to claimant's prescribed medications, would significantly decrease her symptoms to the point where she would be fully capable of maintaining simple, sedentary employment. Consequently, ongoing polysubstance abuse also requires a disability disallowance in this case.

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 disputed MA applications because she does not meet the criteria necessary for approval.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: May 12, 2009

Date Mailed: May 13, 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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