

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████
Claimant

Reg. No: 2008-17502
Issue No: 2009; 4031
Case No: ██████████
Load No: ██████████
Hearing Date:
August 21, 2008
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on August 21, 2008. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not "disabled" for purposes of the Medical Assistance (MA) program and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On December 6, 2007, the Claimant applied for MA-P and SDA.
2. On March 17, 2008, the MRT denied the Claimant's application.

3. On April 3, 2008, the Claimant filed a request for hearing regarding the Department's denial of benefits.
4. The Claimant is 41 years old.
5. The Claimant has a GED.
6. The Claimant's work history in unskilled work as a cashier and factory work.
7. The Claimant suffers with carpal tunnel, PTSD, depression, Bi-polar and chronic pain syndrome.
8. The Claimant's limitations have lasted for 12 months or more.
9. The Claimant has significant limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.
10. The Claimant has significant physical limitations on items such as walking, standing, sitting, lifting, pushing, reaching carrying or handling;

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 (formerly known as the Family Independence Agency) 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).

In order to receive MA benefits based upon disability or blindness, the claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The

Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following factors:

The first factor to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling in a routine work setting. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

The Claimant testified she suffers with chronic fatigue and pain. The Claimant further testified she has trouble concentrating and with memory. The Claimant's sleep is disturbed by pain. The Claimant suffers with numbness in her hands.

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The medical record establishes the diagnosis of chronic fibromyalgia. Appendix I, Listing of Impairments does not have a specific listing for chronic fibromyalgia but there is a Social Security Ruling for chronic fatigue syndrome and like fibromyalgia, chronic fatigue syndrome is a medically determinable impairment.

Social Security Ruling (SSR) 99-2p; (SSR 99-2p (4/30/99)); restates policy of the Social Security Administration for claims of disability based on Chronic Fatigue Syndrome (CFS). SSR 99-2p: Footnote (3) provides:

There is a considerable overlap of symptoms between CFS and Fibromyalgia Syndrome (FMS), but individuals with CFS who

have tender points have a medically determinable impairment. Individuals with impairments that fulfill the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) may also fulfill the criteria for CFS. However, individuals with CFS who do not have the specified number of tender points to establish, will still be found to have a medically determinable impairment.

The medical record establishes that, in addition to the diagnosis of chronic pain syndrome for over twelve months, claimant has chronic pain syndrome related impairment of depression.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a 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. 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 416.927. Claimant has met the burden of proof to find her presently disabled.

In this case, this Administrative Law Judge finds the claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program and retro MA. Other specific financial and non-financial criteria are found in Program Eligibility Manual, PEM 261.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 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).

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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.

JWO/at

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