

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: 2008-22067

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 4, 2008

Wayne 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 September 4, 2008. Claimant appeared *in pro per*; however, on January 19, 2009 she authorized in writing the release of this Hearing Decision to her patient advocate, [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 48-year-old college graduate with a skilled work history as a licensed respiratory therapist; she is currently married but separated from her spouse and she lives alone in [REDACTED]

(2) Claimant stands approximately 5'5" tall and is morbidly obese at approximately 270 pounds (BMI=44.9); she has high blood pressure and high cholesterol, not uncommon in critically overweight patients.

(3) Claimant initially was injured in a motor vehicle accident in 2005 but she continued to work until July 2007 when she suffered a lower lumbar on-the-job injury; she has been unemployed since then (Department Exhibit #1, pgs 8 and 70-76; Client Exhibit A, pg 26).

(4) On March 31, 2008, claimant filed an MA/SDA application alleging a progressive worsening of her lumbar spine problems causes her to be unable to engage in any type of substantial gainful work activity.

(5) Claimant's May 13, 2008 lumbar spine CT scan confirms evidence of severe degenerative disc disease at L5-S1 with vacuum phenomenon, prominent disc bulging and lateral recess/foraminal narrowing secondary to extensive hypertrophic spurring at that level; additionally, bilateral foraminal narrowing and lateral recess narrowing also exists at L4-5 (Client Exhibit A, pgs 26, 29 and 30).

(6) All of claimant's treating doctors verify chronic, debilitating lower back pain with bilateral lower extremity radiculopathy despite conservative treatment (e. g., medication, epidural steroid injections, physical therapy, etc.)(Client Exhibit A, pgs 1-45).

(7) An August 3, 2008 Medical Examination Report (DHS-49) completed by claimant's treating physician confirms she currently has a medical need of assistive devices in

ambulation (walker/cane), and also, she needs help with all daily living activities; additionally, claimant is limited to less than a sedentary exertional work level (Client Exhibit A, pgs 2 and 3).

(8) Claimant has had multiple hospitalizations and ER treatment in 2008 secondary to chronic pain.

(9) A May 2008 consultation note indicates several referring surgeons have recommended surgical intervention but claimant cannot proceed due to lack of insurance (Client Exhibit A, pg 24).

(10) Claimant's current narcotic pain medications ( [REDACTED] ) are ineffective in pain control and cause side effects including excessive drowsiness, mental confusion, inability to concentrate and dizziness.

(11) Claimant relies heavily on assistance from her family and friends for dressing, bathing and grooming, as well as for all other basic daily living activities like housecleaning, meal preparation, shopping, etc.

#### 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.

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).

...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).

...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).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...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 and other non-exertional symptoms she describes (e. g., depression, confusion, excessive drowsiness, etc.) secondary to medication side effects are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony 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 2007.

At Step 2, the objective medical evidence clearly shows claimant's intractable pain, range-of-motion limitations and non-exertional symptoms have lasted the necessary durational periods required to continue this inquiry into her alleged disability.

At Step 3, claimant's physical impairments do not appear to rise to the level necessary to be specifically 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 any of her past sedentary work. This conclusion is based not only on the objective medical test results and treating doctors' opinions, but also on the credible testimony received at hearing. Certainly, return to this type of work would most likely exacerbate claimant's pain levels and could result in additional injury or a further decline in her already debilitated condition. Consequently, an analysis of Step 5 is required.

At Step 5, an individual's age, education, work experience and residual functional capacity are assessed in relation to the documented impairments. 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 even 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, her exertional and non-exertional limitations are severe enough to prevent her from engaging in even sedentary work. Consequently, claimant meets the MA/SDA durational criteria and disability standards cited above. The department's finding to the contrary simply 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 disabled for MA/SDA purposes.

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

(1) The department shall process claimant's March 31, 2008 MA/SDA application and shall award all of 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 January 2011.

(3) The department shall obtain updated medical evidence from claimant's treating physicians, orthopedic specialists, surgeons, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

(4) The department also shall schedule claimant for an independent consultative physical examination at the time of review.

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

Date Signed: October 8, 2009

Date Mailed: October 9, 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:

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