

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: 2008-26329

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2009

Tuscola 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 March 4, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's State Disability Assistance (SDA) case and properly deny Medicaid (MA) benefits at review?

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 nearly 48-year-old (DOB: 2/27/62), tobacco-addicted, insulin dependent diabetic who is morbidly obese at approximately 4'10" tall and approximately 194 pounds (BMI=40.5); she is right hand dominant.

(2) Claimant has a high school education; her past relevant work history is as a certified, direct care nursing assistant (CNA) but she has not been employed for several years.

(3) In October 2007, the department initially approved SDA for claimant and her case remained open until a mandatory medical review was initiated in April 2008.

(4) At review, the department proposed SDA case closure allegedly based on improvement sufficient to allow claimant to return to the competitive workforce.

(5) Claimant filed a timely hearing request; consequently, the proposed SDA closure was deleted pending issuance of this Hearing Decision.

(6) Additionally, at claimant's hearing on March 4, 2009, this Administrative Law Judge issued a written Interim Order for retroactive Medicaid application registration to be synchronized with claimant's SDA review date.

(7) Claimant presented additional medical evidence at the hearing which was subsequently reviewed by the department's State Hearing Review Team (SHRT).

(8) On December 9, 2009, SHRT continued the department's SDA/MA denial based on a finding claimant has the residual functional capacity to engage in light work, defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b)

(9) In May 2007, claimant had a non-ST myocardial infarction which led to multiple stent placements in staged procedures (Department Exhibit #1, pgs 243 and 310-311).

(10) In September 2007, claimant underwent a bilateral peripheral arteriogram due to severe lower extremity claudication (Department Exhibit #1, pgs 96 and 97).

(11) This test revealed bilateral arterial disease which required stent placement in both lower extremities (Department Exhibit #1, pgs 230 and 233).

(12) In November 2007, claimant's treating cardiologist limited her to less than sedentary exertional work activities (Department Exhibit #1, pg 217).

(13) By letter dated October 2008 (6 months after claimant's mandatory medical review), her treating physician indicated her response to lower extremity stenting had been poor, with continued chronic pain, swelling and muscle spasms (Client Exhibit A, pgs 1-3).

(14) This physician also limited claimant to less than sedentary exertional work activities (Client Exhibit A, pg 2).

(15) In February 2008 (2 months before claimant's mandatory medical review), claimant's treating physician added bilateral lower extremity diabetic neuropathy to claimant's diagnosed conditions (Client Exhibit B, Progress Record dated 2/27/08).

(16) Claimant's medical history also is positive for uncontrolled blood sugar levels, high blood pressure and high cholesterol, not uncommon in morbidly obese patients.

(17) Claimant reported at her hearing in March 2009 she remains chronically fatigued, she has no lasting physical endurance, she needs to use a motorized cart when grocery shopping and she continues to have daily pain despite medication compliance (Client Exhibit A, pg 3).

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

i99007(a) - Intro for SDA/Discussion (DVS)

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 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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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).

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).

Furthermore, Social Security Ruling 02-1p states in relevant part:

...Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting of related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments...

Claimant is not disqualified from receiving MA/SDA at Step 1, because she has not been gainfully employed in several years.

At Step 2, claimant's diagnosed conditions are of sufficient duration to pass the *de minimus* hurdle defined by *Higgs v Bowen*, 880 F 2d 860, 862(6th Cir, 1988).

At Step 3, the Cardiac Listings at 4.00A state in relevant part:

...in any case in which an individual has a medically determinable [cardiac] impairment that is not listed, or a combination of impairments no one of which meets a listing, we will make a medical equivalence determination. Individuals who have an impairment(s) with a level of severity which does not meet or equal the criteria of the listings may or not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful activity. Evaluation of the impairment(s) of these individuals should proceed through the final steps of the sequential evaluation process (or as appropriate, the steps in the medical improvement review standard).

All of the above citations require this trier-of-fact to assess claimant's medical impairments using the sequential evaluation process. Consequently, this analysis will continue.

At Step 4, the medical evidence of record supports a conclusion that claimant is completely incapable of returning to the level of exertion required in her past caregiving duties. Furthermore, at Step 5, this Administrative Law Judge completely disagrees with SHRT's finding that claimant retains the residual functional capacity to perform sustained light work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability.

Richardson v Secretary of Health and Human Services, 735 F2d 962 (6th Cir, 1984). At that

point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant's medical records and an objective assessment regarding the credibility of claimant's testimony at hearing, this Administrative Law Judge finds claimant's morbid obesity, when combined with her cardiac, peripheral artery and diabetic disease, render her incapable of performing a full range of even sedentary work on a regular and continuing basis. This finding is consistent with the cardiac specialist's and treating physician's assessments, which must be given due deference. Additionally, this Administrative Law Judge finds the department failed to provide any vocational evidence to establish claimant has the residual functional capacity for light work, and that, given claimant's age, education and work experience, there are significant numbers of jobs in the national economy which she could perform despite her limitations. Accordingly, this Administrative Law Judge concludes claimant was disabled for MA/SDA eligibility purposes at all times relevant to her April 2008 SDA review and MA application (See Finding of Fact #6 above). Consequently, the department's disability disallowance 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 disabled by MA/SDA eligibility standards.

Accordingly, the department's denial of MA/SDA is REVERSED, and this case is returned to the local office for the following:

(1) The department shall process claimant's retroactively registered MA application and shall award her all of the benefits to which she may be entitled to, as long as she meets the remaining financial and non-financial eligibility factors necessary to receive them.

(2) The department shall delete the proposed SDA case closure, unless claimant has been receiving Social Security disability benefits, because she would no longer meet the income criteria necessary for SDA continuation.

(3) The department shall review claimant's conditions for medical improvement in March 2012 (unless she has been approved eligible for Social Security disability benefits by that time).

(4) The department shall obtain updated medical evidence from claimant's treating physicians regarding her treatment, progress and prognosis at review.

SO ORDERED.

/s/

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

Date Signed: February 25, 2010

Date Mailed: March 1, 2010

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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