

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

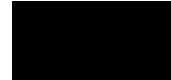


Claimant

Reg. No: 2008-26697

Issue No: 2009

Case No:



Load No:

Hearing Date:

November 10, 2008

Kalkaska 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 November 10, 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)?

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 June 10, 2008, the Claimant applied for MA-P.
2. On July 20, 2008, the MRT denied the Claimant's application.
3. On July 21, 2008, the Claimant filed a request for hearing regarding the Department's denial of benefits.
4. The Claimant is 42 years old.

5. The Claimant has a 12th grade education.
6. The Claimant's work history in unskilled work as welding.
7. The Claimant suffers with fibromyalgia, depression, diabetes, anxiety, herniated disc, GERD.
8. The Claimant's limitations have lasted for 12 months or more.
9. The Claimant has significant limitations on physical activities involving sitting, standing, walking and lifting.

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 he suffers with chronic fatigue and pain. The Claimant further testified he has trouble concentrating and with memory. The Claimant's sleep is disturbed by pain. The Claimant suffers with fatigue and he can't stand for any significant period of time due to pain.

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 fibromyalgia for over twelve months, claimant has chronic fibromyalgia 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled as of June 2008.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated June 10, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. This case shall be reviewed in March 2010.

/s/
Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 03/24/09

Date Mailed: 03/24/09

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.

JWO/at

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