

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: 2008-30731
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 18, 2008
Van Buren 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 December 18, 2008. Claimant and her parents personally appeared and testified.

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 twice-married, 39-year-old female with a high school education and a tobacco abuse history; she currently resides with her parents (Department Exhibit #1, pgs 4, 8, 17, 18 and 37).

(2) Claimant has a valid driver's license but no vehicle; she stands approximately 5' 5" tall and weighs approximately 160 pounds; she is right hand dominant.

(3) Claimant qualified for medical coverage as the custodial parent of two minor children until they were removed and placed with their father in [REDACTED], amidst claimant's suicidal ideation and her son's allegations of child abuse (Department Exhibit #1, pgs 7 and 8).

(4) Claimant was treated in a local hospital's [REDACTED] in [REDACTED], for situational depression/suicidal ideation precipitated by the removal of her children from her home, the desertion of her boyfriend and the death of her dog all in the same week (Department Exhibit #1, pgs 39-41).

(5) During an independent psychological examination three months later [REDACTED], claimant reported [REDACTED] was effective in eliminating her suicidal thoughts, anger outbursts and unstable moods; her Global Assessment Function (GAF) was 65 (normal) and her prognosis was stable at that time.

(6) As of [REDACTED] claimant also was involved in [REDACTED] counseling; she reported she self-initiated treatment the previous month.

(7) Claimant was diagnosed with Bipolar Disorder approximately [REDACTED] ago; a Personality Disorder diagnosis was recently added (Department Exhibit #1, pgs 39 and 40).

(8) Claimant reports chronic pain from an allegedly herniated disc, a history of asthma, Reynaud's Syndrome and Gastroesophageal Reflux Disorder (GERD), in combination with the mental health diagnoses referenced above, rise to the level necessary to qualify for a disability allowance.

(9) Claimant submitted no objective medical evidence to verify the existence or severity of her alleged lower lumbar impairment, but she reported it was confirmed by an [REDACTED] done over [REDACTED] years ago (Department Exhibit #1, pg 3).

(10) At claimant's independent physical examination in [REDACTED], claimant demonstrated no abnormalities of gait, no evidence of joint laxity, crepitation or effusion, no difficulty with squatting or heel/toe walking, no impaired lumbar spine range of motion, no kyphoscoliosis and no difficulties during straight leg raising maneuvers (Department Exhibit #1, pgs 4 and 5).

(11) Although claimant reports chronic asthma, she has not had any hospitalizations or emergency room visits for this condition; additionally, the standard prescription medications are being prescribed for symptom management (Department Exhibit #1, pg 3).

(12) Claimant takes [REDACTED] and [REDACTED] for GERD (Department Exhibit #1, pg 3)(See also Finding of Fact #8 above).

(13) Claimant has not been employed full-time since 1993, when she worked at a plastics factory assembling parts.

(14) At claimant's [REDACTED] independent physical examination she demonstrated good grooming/hygiene, full cooperation in the examination process, appropriate judgment/insight, normal recent/remote memory and unimpaired concentration (Department Exhibit #1, pg 4).

(15) A [REDACTED] completed in [REDACTED] found no evidence of limitations in any of the four areas required to be assessed during the disability determination process (Department Exhibit #1, pgs 13 and 14).

(16) Likewise, claimant's independent mental health examination done in [REDACTED] states in relevant part:

[Claimant] noted that if she appears "sane" in my report she has a better chance of getting her kids back, less chance of getting [REDACTED] I or [REDACTED] (Department Exhibit #1, pg 10).

(17) Claimant presented as logical, coherent, clear, organized, relaxed and expressive during clinical evaluation, and she reported she was "happier than (she's) ever been in (her) life" except that she doesn't have her kids back yet (Department Exhibit #1, pg 11).

(18) Three months later, in [REDACTED], claimant was arrested for public misconduct.

(19) Claimant's parents reported at hearing she is easily angered and she has walked down the street yelling and swearing; their personal opinion is claimant's Bipolar symptoms are not well-controlled.

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

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...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s),

including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[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).

Claimant does not qualify for the MA/SDA coverage she seeks because she has not presented any objective medical records to establish the existence of a severe physical or mental condition which would prevent her from performing any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. In fact, when taken as a whole, the record suggests claimant may be engaging in symptom magnification for secondary gain (i. e., a disability allowance). Unfortunately, claimant's medical records do not support a finding that she is disabled as that term is defined under the governing rules. Consequently, claimant's disputed application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is **AFFIRMED**.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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:

[REDACTED]