

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: 2008-31209
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
Grand Traverse 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 11, 2009. Claimant 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 single, 50-year-old high school graduate ([REDACTED]) with corrections officer training from [REDACTED] who was residing with her adult daughter in [REDACTED] as of her March 2009 hearing date (Department Exhibit #1, pgs 32, 33, 39 and 79-80).

(2) On July 9, 2008, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA) because she had unpaid medical bills and she felt she needed to find a place to live on her own because things weren't "going well" at her daughter's house (Department Exhibit #1, pgs 56 and 80).

(3) Claimant never became a corrections officer; however, her past relevant work experience includes motel housekeeping, various factory positions, and most recently, a certified nurse's aide position (licensed CNA)(Department Exhibit #1, pg 78).

(4) When the department denied claimant's July 9, 2008 disability application she filed a hearing request; her hearing was held on March 11, 2009.

(5) At hearing, claimant alleged multiple areas of musculoskeletal pain and stiffness (back, hips, legs, etc.), as well as abdominal and chest pain which allegedly render her completely incapable of engaging in substantial gainful work activity; however, all claimant's 2008 x-rays in these areas are normal (Department Exhibit #1, pgs 5-7 and 25-28).

(6) In February 2008, five months before filing her disputed MA/SDA application, claimant was treated briefly and released from a local Emergency Room (ER) in stable condition after her influenza swab came back negative and her lung x-rays showed no sign of any infiltrates.

(7) Claimant was advised by the ER staff to stop smoking, drink plenty of fluids and take a short course of prescription antibiotics (██████████); additionally, she was given a two-day absence from work excuse (Department Exhibit #1, pgs 23 and 24).

(8) By June 2008, claimant left work having been recently demoted from CNA to kitchen duty (Department Exhibit #1, pg 33)(See also Finding of Fact #3 above).

(9) Claimant stands approximately 5'1" tall and weighs approximately 140 pounds; she is right hand dominant.

(10) Claimant is fully independent in self cares; additionally, she has a valid driver's license and is physically capable of doing her own laundry, dishes, shopping and cleaning (Department Exhibit #1, pg 76).

(11) Claimant reports she has had many "nervous breakdowns," and also, since the last time she filed a disability application, she says they have been getting worse to the point "she can't work;" however, no psychiatric or psychological evidence exists and the medical/psychological records submitted to date do not verify a history of these purported multiple "nervous breakdowns."

(12) The records show claimant's past mental health history is positive for outpatient treatment at [REDACTED], where she was diagnosed with Adult Attention Deficit Disorder (ADD); [REDACTED] was prescribed for symptom management (Department Exhibit #1, pg 40).

(13) Claimant also voluntarily entered outpatient counseling at [REDACTED] in [REDACTED] while still employed to reduce reported work stress and conflict with her daughter, as well as to work through childhood emotional abuse (Department Exhibit #1, pgs 37-62).

(14) [REDACTED] were prescribed for symptom management; claimant reported she was still taking these medications as of the hearing date, in addition to the [REDACTED] (referenced in Finding of Fact #12 above).

(15) With the prescription medications and counseling, claimant's Global Assessment Function (GAF) increased from 58 to 68 between January and July 2008 (Department Exhibit #1, pgs. 37 and 62).

(16) Claimant also underwent initial axis screening at [REDACTED] [REDACTED] in [REDACTED] which reveals an extensive substance abuse history with many failed treatment attempts and sporadic participation in [REDACTED] See New Medical Evidence, pg 3).

(17) An updated [REDACTED] from claimant's individual counseling sessions, dated September 18, 2008, states in relevant part:

We discussed [claimant's] first group session. She was surprised that she would not be able to process her individual problems, and I explained that these coaching sessions are for that purpose. She is hopeful that the group will help her, but she is also very concerned about getting resources for housing and getting disability. She had a form that she wanted signed to have a student loan forgiven due to disability, but I told her that I would not be able to declare her disabled at this time (New Medical Evidence, [REDACTED] pg 1).

(18) Since initiating [REDACTED], Post Traumatic Stress Disorder (PTSD), Bipolar Disorder and Polysubstance Dependence have been added to claimant's General Anxiety Disorder diagnosis (Department Exhibit #1, pg 62)(See also Finding of Fact #13 and #16 above).

(19) Claimant's medical records indicate she has filed three Social Security disability applications, all of which have been denied (New Medical Evidence, Clinical Assessment dated 8/28/08, pg 8).

(20) The impairments claimant alleged on her Social Security disability applications are identical to those alleged in her pursuit of MA/SDA disability status.

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).

Jurisdiction must be established for a contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

This policy is also applied in SDA cases, because the MA, SDA and Social Security disability definitions are identical, except for a shorter durational period for SDA (90 days).

The relevant federal regulations are found at 42CFR Part 435. These regulations provide: “An SSA disability determination is binding on an agency until that determination is changed by the SSA.” 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: “If the SSA determination is changed, the new determination is also binding on the department.” 42 CFR 435.541(a)(2)(b)(ii). These federal mandates are reflected in the policy items cited above (BEM Item 260).

The evidence of record in this case does not support a finding that claimant had a pending appeal relative to her most recent Social Security Administration (SSA) disability denial as of the MA/SDA hearing date. Consequently, this case could be dismissed for lack of jurisdiction. However, in the event that said appeal did exist, and giving claimant every benefit of doubt, this Administrative Law Judge will proceed on the merits of her case.

It must be noted Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines also are applied in SDA cases. The guidelines state in relevant part:

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

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).

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

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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 has not been gainfully employed since June 2008 (See Finding of Fact #8 above).

At Step 2, claimant has presented no objective medical records to support the presence of a severe physical impairment. However, claimant's psychological treatment history evidences ADD and mood instability (caused by general anxiety, bipolar symptoms and post traumatic stress disorder). Nevertheless, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be

achieved, a finding of not disabled must be rendered. Claimant's psychological symptoms appear fully capable of stabilization and adequate management as long as medication compliance and outpatient counseling is maintained. Furthermore, this Administrative Law Judge finds claimant's testimony regarding the severity of her mood instability is likely inflated for secondary gain (a disability allowance). Nevertheless, claimant's impairments meet the *de minimus* level of severity and duration required for further analysis under *Higgs v Bowen*, 880 F2d 860, 862(6th Cir, 1988). As such, this analysis will continue.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed mental impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, this Administrative Law Judge finds claimant's past patient caretaking duties may exacerbate her stress levels; consequently, ruling any ambiguities in claimant's favor, this Administrative Law Judge finds claimant is incapable of returning to her past relevant work. As such, this analysis will continue to the very last step required in the sequential evaluation process.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 50-year-old individual with a high school diploma and some post-secondary education. She has an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the psychiatric, psychological and psychosocial evidence of record, that claimant retains the residual functional capacity to perform at least light, unskilled low stress work, as that term is defined above. As such, claimant is not disabled under the MA/SDA definitions, because she can return to other

light work, as directed by Medical-Vocational Rule 202.13. Claimant's disputed application, filed July 9, 2008, 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 denied claimant's July 9, 2008 MA/SDA application based on a finding she lacks a legly disabling condition.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: February 25, 2010

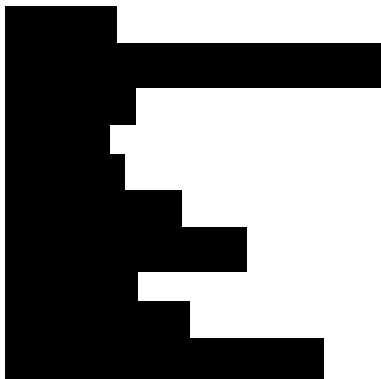
Date Mailed: March 1, 2010

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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