

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: 2008-7787
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 25, 2008.

ISSUE

Whether claimant has established disability for Medical Assistance (MA) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On July 27, 2007, claimant applied for MA and SDA.
- (2) October 2, 2007, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) October 8, 2007, the department sent claimant written notice that the application was denied. Department Exhibit C.

(4) October 19, 2007, the department received claimant's timely request for hearing.

(5) February 15, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) March 25, 2008, the telephone hearing was held. Prior to the close of the record, claimant requested the record be extended for submission of additional medical evidence. Claimant waived the right to a timely hearing decision. July 14, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, July 14, 2008.

(7) Claimant asserts disability based on impairments caused by spinal fusion, leukemia, fibromyalgia, depression, and neck problems.

(8) Claimant testified at hearing. Claimant is 55 years old, 5'7" tall, and weighs 137 pounds. Claimant completed high school and two years of college. Claimant has a driver's license but does not drive due to inability to turn her neck properly. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been doing medical transcription work and secretarial work.

(10) March 27, 2007, x-rays of the cervical and lumbar spine revealed bilateral laminectomy at L4-L5 with cage surgery at the disc space and post surgical change; mild bulging at L3-L4 with mild central canal stenosis; shallow central and right paracentral disc protrusion at the C5-C6 disc space; congenital fusion at C4-C5; and degenerative bulging and/or spurring at the C2-C3, C3-C4 and C6-C7 disc spaces. Department Exhibit A, pgs 74-78. July 23, 2007, claimant's family physician completed a Medical Examination Report (DHS-49) following

physical exam on July 13, 2007. Current diagnoses are stated as chronic low back pain, bulging lumbar disc, prior back surgery, hypertension, cervical spondylosis with radiculitis, fibromyalgia, chronic leukemia. Doctor indicates that claimant's condition is deteriorating. She is unable to perform repetitive actions with either upper extremity and either lower extremity. She is unable to stand and/or walk two hours in an eight-hour workday. Department Exhibit A, pgs 8-9. November 23, 2007, claimant presented to emergency room complaining of back pain with lumbar pain radiating down both legs. Patient has past medical history of two previous back surgeries, one in 1994 and one in 1998. Surgeries involved BAK-type cages internal body at L4-L5 fusion. Patient reports that she has had a lot of numbness and tingling from the time of her surgery that has never resolved. She reported that her symptoms increased in the past two months. November 26, 2007, claimant underwent a dorsal lumbar fusion with lumbosacral fusion, and fusion or refusion of two to three vertebrae, insertion of interbodies final fusion device and insertion of recombinant bone morphogenic protein. Patient responded well and reported her back pain was much more relieved. Claimant Exhibit A.

(11) May 2, 2006, claimant underwent a bone marrow biopsy and a report was prepared that revealed no evidence of chronic lymphocytic leukemia. Department Exhibit A, pgs 25-27.

(12) On or about January 28, 2006, claimant was admitted to hospital complaining of chest pain. Physical examination revealed no pallor or icterus and no lymphadenopathy. Heart sounds one and two were normal. There was no S3, S4, or click. Lungs were clear to auscultation and percussion. Abdomen was soft with no localized tenderness. There was no calf tenderness or pedal edema. Patient was alert and oriented x 3. There were no focal neurological deficits. EKG shows normal sinus rhythm at 84 beats per minute, non specific T-wave abnormalities.

Diagnostic impression was chronic neck with cervical radiculopathy; chronic low back pain status post lumbar spine fusion; chest pain, rule out unstable angina; macrocytosis; and hypothyroidism. X-rays of the cervical spine were performed that revealed near complete fusion of vertebral bodies at C4 and C5. Department Exhibit A, pgs 32-48. X-rays performed of the right shoulder during April 2007 revealed mild osteoarthritis of the right shoulder. Department Exhibit A, pg 59.

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).

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

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant underwent spinal fusion in the 1990s. During March 2007, x-rays were performed that revealed disc protrusion and degenerative changes in the cervical spine and mild bulging at L3-L4 with mild central canal stenosis in the lumbar spine. During July 2007, claimant reported worsening of pain during the two previous months. In November 2007, claimant underwent lumbar fusion surgery. The record does not contain objective medical evidence to establish that claimant continues to be

impaired beyond the normal recovery time needed for that type of surgery. The objective medical evidence of record indicates claimant has a history of lymphocytic leukemia. Diagnostic testing conducted in May 2006 revealed no current evidence of the disease. At hearing, stated she had depression. No objective medical evidence was submitted to establish this diagnoses or to establish claimant's level of impairment due to this condition if any. Finding of Fact 10-12; Department Exhibit A; Claimant Exhibit A.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been doing medical transcription work and secretarial work. See discussion at Step 2 above. Finding of Fact 9-12.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

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.

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).

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities following her recovery from surgery. Claimant's period of impairment prior to surgery and her period of recovery do not meet the durational requirement to qualify for Medical Assistance. Considering claimant's Vocational Profile (advanced age, high school or greater education, and history of skilled/semi-skilled work-skills transferable) and relying on Vocational Rule 202.07, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively

participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5 above, the Administrative Law Judge decides that claimant does have severe impairments that prevent work for 90 days or more beginning effective July 2007 (the month her pain was exacerbated) and ending March 2008 (the month claimant's neurologist indicated that she could work as long as she has freedom to rest frequently without restriction). Finding of Fact 10-12; Claimant Exhibit A, Attending Physician's Statement, 3-1-08. Therefore, claimant meets the disability requirement to qualify for SDA based on disability effective the month of application, July 2007, and continuing through March 2008. The record is not sufficient to establish that claimant meets the disability requirements to qualify for SDA following the month of March 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance. Claimant has established disability for State Disability Assistance effective July 2007 and continuing through March 2008.

Accordingly, the department's action is, hereby, REVERSED in part. The department is to initiate a determination of claimant's financial eligibility for SDA commencing July 2007 and continuing through March 2008. No medical review is necessary as claimant's SDA eligibility is for a closed period of time.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 4, 2009

Date Mailed: December 8, 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.

JAB/db

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