

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: 2008-8168  
Issue No: 2009/4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 26, 2008  
Calhoun 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 26, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's August 13, 2007 Medicaid (MA) and State Disability Assistance (SDA) application based on a finding she lacked a legally disabling condition?

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 51-year-old tobacco abuser (10 packs per week) who is medically obese at 5'7" tall and 213 pounds (BMI=33.4); she is right hand dominant.

(2) Claimant completed ninth grade then left school due to pregnancy; she has an unskilled work history (e.g., gas station cashier/stocker and factory work) but she has not been gainfully employed since she got fired from [REDACTED] in May 2006 (Department Exhibit #1, pg 287).

(3) On July 15, 2005, claimant applied for Social Security Administration (SSA) disability benefits (Department Exhibit #1, pgs 179-186).

(4) That application was denied by written notice dated March 1, 2005 and the evidence submitted to date does not confirm claimant ever appealed the denial (Department Exhibit #1, pgs 175-178).

(5) Claimant alleged impairments on her Social Security disability application identical to the impairments she set forth when she filed her August 13, 2007 MA/SDA application, namely residuals from a remote cervical fusion and right shoulder surgery combined with anxiety/depression and a Bipolar Diagnosis (See Hearing Request dated October 3, 2007).

(6) Claimant experienced work-related neck and right shoulder injuries during a factory packing job incident on January 9, 2001 (Department Exhibit #1, pg 7).

(7) Cervical x-rays taken shortly thereafter showed evidence of a previous, solid C5-6 cervical fusion done in 1990 (Department Exhibit #1, pgs 7, 14 and 93).

(8) Additionally, a right shoulder MRI scan taken at that time showed some mild subacromial impingement inconsistent with the level of pain being reported; consequently, further testing was initiated (Department Exhibit #1, pg 7).

(9) By December 10, 2001, claimant's orthopedic surgeon decided to do a discectomy and decompression at her former fusion site (C5-6) with additional procedures between C4 and C6 to be determined at the time of surgery (Department Exhibit #1, pg 84).

(10) On January 18, 2002, claimant underwent the following procedures: (1) a two-level anterocervical discectomy at C4-5; (2) a corpectomy at C5; (3) a pseudoarthrosis take-down at C5-6; and (4) a fibular allograft from C4-6 which was secured with plates and screws (Department Exhibit #1, pgs 80, 81 and 90).

(11) Claimant's November 4, 2007 cervical spine MRI scan notes good alignment with no nerve root impingement; some mild diffuse disc disease is present, not uncommon for patients with her orthopedic treatment history (Client Exhibit A, pg 3).

(12) Likewise, the lumbar spine MRI scan taken on that same day reveals mild to moderate facet disease without nerve root impingement or herniation (Client Exhibit A, pg 2).

(13) Claimant's medical history also is positive for subacromial impingement syndrome (Department Exhibit #1, pgs 134 and 135).

(14) On June 27, 2002 claimant underwent right shoulder subacromial decompression; the follow-up examination done on July 8, 2002 notes no complications or problems from that procedure (Department Exhibit #1, pgs 119 and 132).

(15) Office visit notes from the next month (8/26/02) state in relevant part:

Still having quite a bit of pain although she has excellent motion about the shoulder. No focal weakness. Neurologically otherwise grossly intact. Despite her concern that she has plateaued, she is showing significant improvement from the last time she was here. I am not sure what the etiology of the numbness is in her arm. This is fairly intermittent. Recheck on one month. Continue with PT (Department Exhibit #1, pg 131).

(16) Claimant has been diagnosed with Bipolar Mood Disorder; she has a history of intermittent outpatient counseling, but was taking her psychotropic medications daily as prescribed as of the March 26, 2008 hearing date, per self report (Department Exhibit #1, pgs 293 and 297).

(17) Additionally, claimant's treating physician has prescribed [REDACTED] for pain management.

### 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 42 CFR 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 item 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 SSA disability denial as of the March 26, 2008 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 in several years.

At Step 2, claimant's diagnosed impairments, in combination, have left her with some range of motion limitations, mood instability and pain. However, 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 self-reported symptoms appear fully capable of adequate management as long as medication compliance is maintained. Nevertheless, these impairments meet the *de minimus* level of severity and duration required for further analysis.

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

At Step 4, the record reveals claimant was required to do heavy lifting and excessive standing in her most recent stocker/cashier position in 2006. This Administrative Law Judge agrees with claimant's contention that these activities are likely to exacerbate her pain or cause additional injury. Since claimant cannot be found capable of returning to her past relevant work, this analysis must continue.

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 51-year-old individual with a limited education (9<sup>th</sup> grade) and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least light work, as that term is defined above. Claimant's biggest barrier to employability appears to be her lack of any recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with her skills, interests, and abilities. Claimant is not disabled under the MA/SDA definitions, because she can return to other light work, as directed by Medical-Vocational Rule 202.10. As such, her 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 denied claimant's August 13, 2007 MA/SDA application based on a finding she lacked a legally disabling condition.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: January 11, 2010

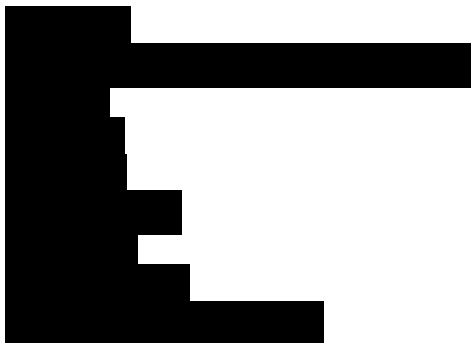
Date Mailed: January 11, 2010

**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.

MBM/db

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