

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: 2009-13442
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 7, 2009
Clare County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 May 7, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 August 29, 2008, claimant filed an application for Medical Assistance, retroactive MA and State Disability Assistance benefits alleging disability.

(2) On December 9, 2008, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work.

(3) On December 10, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 14, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 27, 2009, the State Hearing Review Team (SHRT) again denied claimant's application also stating she was capable of performing past work as gas station cashier, light unskilled work.

(6) Claimant presented additional medical evidence following the hearing, which was forwarded to SHRT for additional review. On May 28, 2009, SHRT approved claimant's SDA application with onset of April, 2009 to medical review of August, 2009. MA was denied due to lack of duration per 20 CFR 416.909.

(7) Claimant is a 55 year-old female who birthdate is [REDACTED]. Claimant is 5'5" tall and weighs 200 pounds after gaining 30 lbs. in the last year due to depression.

(8) Claimant has a 12th grade education and can read, write and do basic math.

(9) Claimant is not currently employed and last worked in January, 2008 as a gas station attendant in Texas for 5 months. Claimant then moved to Michigan to be around family in February, 2008 and because of health problems. Claimant was also a gas station attendant for 3 ½ years, from 2004 to 2008, until the station went out of business, and took care of her parents from 2000 to 2004 in their home.

(10) Claimant alleges as disabling impairments: total hip replacement in April, 2009, depression, disc replacement in her back, metal plate in her right arm, and bursitis in both shoulders.

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

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 does 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).

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).

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).

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 testified that she has not worked since January, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes a medical evaluation of [REDACTED]. Claimant's chief complaint was back problems and shoulder pain, and she has had a history of chronic back and bilateral shoulder problems. Claimant reported not working since January, 2008 when she stopped working as a clerk at a convenience store because of back pain as well as depression. Claimant is living with some friends in a home, only does the dishes and no other household chores, and mostly reads, watches television and "cries". Claimant stated she can sit about 30 minutes, stand about 20 minutes, and walk about 100 yards, has difficulty climbing steps because of her back pain, and can lift about 20 pounds on occasion. Claimant was tearful at times and appeared to be in mild discomfort. Claimant's immediate, recent and remote memory was intact with normal concentration, and her insight and judgment were both appropriate. Claimant had moderate difficulty heel and toe walking, moderate difficulty squatting, and was unable to hop. Claimant also walked with a wide based gait without the use of an assist device. Conclusion was that of shoulder and back pains much of which appears to be due to overuse and most likely due to chronic horseback riding and outdoor activities. Claimant did have diminished range of motion in her back with associated tenderness and difficulty doing orthopedic maneuvers. Claimant did compensate with a wide based gait but remained stable enough not to require the use of an assist device. The examiner was of the opinion that at this point, pain management, weight loss, endurance training, and evaluation for claimant's underlying depression would result in some remediability. Claimant's current prognosis is fair to guarded but not actively deteriorating. (Department's Exhibit I, pages 56-60).

Psychological Evaluation of [REDACTED], quotes the claimant as saying she had not seen a physician since 2005 when she moved back to Michigan from Texas. Claimant denied

any inpatient psychiatric treatment or any outpatient therapy. Claimant's presentation was notable for her depressive symptoms and anxiety related prior trauma suffered at the hands of her second husband who was psychologically and physically abusive. Claimant also has ongoing back pain and prior bouts with alcohol. Claimant's diagnosis was that of Major Depressive Disorder, Moderate Severity, Chronic, Posttraumatic Stress Disorder, back pain, problems related to social environment, unemployed, and a GAF of 50. Claimant's prognosis was guarded given long standing anxiety and depression and persistent pain, but she could manage her benefit funds. Due to claimant's persistent anxiety and depressive symptoms, she is likely to best function in an employment setting marked by brief interactions with coworkers, supervisors, and/or the public. Claimant's apparently worsening back pain has further limited her capacity for work and she has limited capacity to walk or stand for long periods of time without substantial discomfort. (Department's Exhibit I, pages 51-55).

Additional information presented by the claimant following the hearing shows that she had left total hip replacement on [REDACTED]. X-ray of the hip following the surgery shows satisfactory alignment/positioning post total left hip arthroplasty. Claimant also provided a statement from her doctor dated [REDACTED], stating she has physical limitations from a recent hip replacement and is having significant anxiety and depression causing irritability, difficulty with social relationships, lack of energy, and decreased concentration that is presently inadequately treated. Doctor further states that at this time claimant would not be able to function at work appropriately and she should be excused from work over the next three to six months to be further evaluated in the future.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work

activities. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant's medical records prior to her April, 2009 surgery point out to significant physical issues that would have more than a minimal effect on her ability to perform basic work functions, and total hip replacement that took place in April, 2009 further contributes to such effect. Claimant's impairments have lasted and/or are expected to last 12 months or more.

The analysis proceeds to Step 3 where 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. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge concludes that the claimant would not have been able to perform her previous work in a convenience store due to her physical issues, inability to sit, stand or walk for a prolonged period of time, even prior to her April, 2009 surgery. Claimant's psychological issues also appear to contribute to her inability to perform job duties. Finding that the claimant is unable to perform work which she has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

Claimant has submitted sufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that she has established by objective medical evidence that she could at best only perform unskilled sedentary work even prior to her April, 2009 surgery. Under the Medical-Vocational guidelines, an individual closely approaching advanced age and/or of advanced age (claimant was age 54 at the time of application and is now 55), with high school education and an unskilled work history who can perform only sedentary work is considered disabled pursuant to Medical-Vocational Rules 201.04 and 201.12.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does meet the definition of disabled under

the MA-P program, the claimant does meet the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA and retroactive MA application, and her SDA application except for the period of time starting in April, 2009.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed MA, retroactive MA and SDA August 29, 2008 application.
2. Grant the claimant any and all MA and SDA benefits she is eligible to receive (i.e. meets financial and non-financial eligibility requirements) based on August 29, 2008 application.
3. Notify the claimant in writing of MA and SDA determination.
4. Review claimant's continuous MA and SDA medical eligibility in August, 2010.

Claimant is provide updated medical records of any and all physical and psychological treatment she receives, and to comply with any treatment suggested by her doctors.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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 mailing 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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