

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: 2009-16476  
Issue No: 2009/4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 19, 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 May 19, 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 divorced, 49-year-old smoker with an unskilled work history as a laundromat attendant, a bartender and a painter/cleaner; she has not been employed since she was hit by a car while crossing the street near [REDACTED] in [REDACTED] (Department Exhibit #1, pg 8; Client Exhibit A, pg 1).

(2) This accident occurred on May 4, 2005, and claimant has remained a patient of the pain management specialists at [REDACTED] since then.

(3) On July 14, 2008, claimant filed a disability-based MA/SDA application alleging the residuals from this accident have rendered her physically incapable of performing substantial gainful work activities.

(4) Initially, claimant sustained soft tissue injury to her right hip which developed into a right gluteal hematoma, thus creating chronic right buttock pain with sciatic radiation into her right lower extremity, in addition to chronic neck/lower back discomfort (Department Exhibit #1, pg 31; Client Exhibit A, pg 1).

(5) Claimant's treating pain management specialist completed a Medical Examination Report (DHS-49) on August 9, 2008, which verifies cervical and lumbar spine radiculitis, via MRI testing (Department Exhibit #1, pgs 2 and 28).

(6) Claimant stands 5'3" tall and weighs approximately 100 pounds (Department Exhibit #1, pg 20).

(7) In September, 2008, claimant's treating pain management specialist noted markedly positive straight leg raises on the right confirming axial and radicular symptoms; additionally, Fabere's was positive bilaterally with tender bilateral sacroiliac joints but more marked on the right (Department Exhibit #1, pg 20).

(8) At that point in time, claimant's treating specialist approved a handicapped vehicle sticker (Department Exhibit #1, pg 20).

(9) A January 3, 2009 independent medical examination noted claimant's gait was positive for a mild, right-sided limp without use of an assistive device; claimant's grip strength in both hands was mildly diminished (Department Exhibit #1, pgs 28 and 30).

(10) As of claimant's May 19, 2009 hearing date, her relevant prescription medications were [REDACTED] she reports minimal symptom relief despite compliance.

(11) An updated medical assessment prepared by claimant's treating specialist for the past four years, dated April 18, 2009, states in relevant part:

Over the course of the past few years, the patient has been treated with extensive physical therapy, pain medication, and spinal corticosteroid injections. She routinely presents with severe, intractable pain in her neck radiating to her bilateral shoulders and down her right arm. She states that driving is difficult for her due to the pain and sometimes laying down helps relieve her pain. She also has residual effects of the right gluteal hematoma and sciatica going down her right leg.

The patient's past medical history is significant for emphysema, pneumonia, allergies, high cholesterol, and a mild heart attack. Her hospitalization and surgical history includes hospitalization for a motor vehicle accident, hospitalization for a bacterial staph infection, and hospitalization for a mild heart attack on 3/18/06. Her current medications are [REDACTED]. She is allergic to [REDACTED] and [REDACTED].

Her clinical examination revealed significant tenderness over the cervical and lumbar spine, as well as limited range of motion of the cervical and lumbar spine. She ambulates with an antalgic gait. The diagnostic impressions remain consistent with chronic lower back pain, chronic neck pain, and right-sided sciatica.

Comments: It is my clinical opinion that the patient's overall prognosis is poor. At this point in time, she is permanently disabled and unable to engage in any form of gainful employment. Also, the extent of her medical condition would necessitate the need for household assistance with lifting activities (Client Exhibit A, pgs 1 and 2).

### 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).

"Disability" is:

...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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities.

20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone.... 20 CFR 416.945(e).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

...Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms.... 20 CFR 416.929(c)(3).

...Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account...in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(3).

...We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons.... 20 CFR 416.929(c)(3).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 20 CFR 416.929(c)(4).

[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).

In claimant's case, the pain and other related symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

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 qualified from receiving MA/SDA at Step 1, because she has not been employed since she was struck by a car in May, 2005.

At Step 2, the objective medical evidence clearly shows that claimant's severe, chronic pain has lasted the necessary durational periods required to continue this inquiry into her alleged disability.

At Step 3, claimant's diagnosed orthopedic impairments do not appear to rise to the level necessary to be specifically disabling by law; consequently, an analysis of her ability to engage in her past relevant work is required.

At Step 4, it is clear that claimant cannot perform any of her past relevant work due to her non-exertional pain and range of motion limitations. Consequently, an analysis of Step 5 is required.

At Step 5, claimant's age, education, work experience and residual functional capacity are assessed, in relation to the guidelines set forth in the federal regulations. However, these rules do not apply in cases where an individual is found to have no residual functional capacity because he or she cannot perform sedentary work, as that term is defined at 20 CFR 416.967(a).

Under the facts and circumstances presented in this case, claimant has shown, by credible testimony consistent with her treating specialist's diagnoses and opinions that her pain and range of motion limitations have been severe enough to prevent her from engaging in even sedentary work from the date of her injury to the current time. Consequently, claimant meets the MA/SDA durational criteria and disability standards cited above, and the department's finding to the contrary simply cannot be upheld.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not legally disabled.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's July 14, 2008 MA/SDA application, and award her all the benefits to which she may be entitled, as long as she meets the remaining financial and non-financial eligibility factors.

(2) The department shall review claimant's condition for improvement in May, 2010, unless her Social Security disability application is approved by that time.



(3) The department shall obtain updated medical evidence from claimant's treating sources regarding her continued treatment, progress and prognosis at review.

(4) The department also shall schedule claimant for an independent consultative physical evaluation at the time of review.

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

Date Signed: June 4, 2009

Date Mailed: June 5, 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.

MBM/db

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