

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: 2009-21378
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2009
St Clair 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 June 30, 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 41-year-old smoker (nicotine dependent) with a general equivalency diploma (GED) who stands approximately 5'7" tall and weighs approximately 145 pounds; she is left hand dominant (Department Exhibit #1, pgs 4, 17, 20 and 46).

(2) Claimant resides in her deceased mother's house with her fiancé; she has a valid driver's license but neither she nor her fiancé have a vehicle as her most recent one was repossessed in December 2008, per self report.

(3) Claimant has an unskilled work history (e. g., food service aide, kitchen aide, convenience store clerk, bartender) but she has not been employed since April 2008 when she lost her bartending job to excessive absences reportedly secondary to poor health (Department Exhibit #1, pg 17).

(4) On August 7, 2008, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(5) When that application was denied claimant requested a hearing, held on June 30, 2009.

(6) Claimant's most recent pulmonary function test confirms she has mild to moderate COPD with good response to inhaler therapy (Department Exhibit #1, pgs 2, 42 and 43).

(7) As of January 2009, claimant was taking Albuterol and Singular in addition to using a daily nebulizer for shortness of breath symptom management (Department Exhibit #1, pg 47).

(8) During an independent physical examination conducted on January 27, 2009, claimant exhibited a normal gait and full range of motion in all areas including her cervical spine, despite undergoing a C5-C6 discectomy in 2006 allegedly stemming from a remote motor vehicle accident at age 21 (Department Exhibit #1, pgs 42-47).

(9) Claimant was seen for a voluntary initial assessment at [REDACTED] in March 2007; she returned in June 2007, much than later recommended (Department Exhibit #1, pg 4).

(10) At that time, smoking cessation was recommended and a [REDACTED] prescription was issued because claimant was having recurrent bouts of pneumonia in 2007, exacerbated by ongoing cigarette use (Department Exhibit #1, pgs 4 and 39).

(11) Claimant reports she has consistently participated in outpatient counseling at [REDACTED] since her October 2007 hospitalization for an intentional overdose of [REDACTED] (Department Exhibit #1, pgs 37-39).

(12) Claimant sees her psychiatrist once a month or every other month as needed; her prescription maintenance medications as of her June 30, 2009 hearing date were [REDACTED] per self report.

(13) January 12, 2009, claimant underwent an independent psychological evaluation (Department Exhibit #1, pgs 37-39).

(14) Claimant was alert and oriented times three with intact memory but she presented in a tearful/labile manner, expressing helpless and hopeless feelings secondary to situational stressors in employment, primary support group and general health; her Global Assessment Function (GAF) score was 50 (Department Exhibit #1, pg 37).

(15) Recurrent Depressive Disorder was confirmed, consistent with claimant's treating psychiatrist's assessment (Department Exhibit #1, pgs 3 and 37).

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).

Statutory authority for the SDA program states 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:

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- (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.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal regulations. These regulations are also applied in SDA cases. They state in relevant part:

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, claimant has the burden of proof pursuant to the following section:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

The federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with claimant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in part:

...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).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant remains eligible at the first step since she is not currently working, and has not been employed since 2008. 20 CFR 416.920(b). As such, the analysis must continue.

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. As such, the analysis must continue.

The third step of the analysis looks at whether an individual meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not. As such, the analysis must continue.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the physical and mental demands of the work done by the applicant in the past. 20 CFR 416.920(e). In this case, this Administrative Law Judge will rule

any ambiguities again in claimant's favor and proceed to the very last available step in the required sequential evaluation process.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence presented, this Administrative Law Judge finds Medical-Vocational Grid Rule 202.20 directs a finding of not disabled. In reaching this conclusion, this Administrative Law Judge considered all of the impairments documented in Finding of Fact #1 through #15 above. She finds insufficient medical or psychological documentation to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in gainful employment, specifically, light unskilled low stress work. As such, the department's denial of claimant's disputed application must stand.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA and SDA eligibility standards.

Accordingly, the department's denial of claimant's August 7, 2008 MA/SDA application is AFFIRMED.

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

Date Signed: January 13, 2010

Date Mailed: January 14, 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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