

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 200922841
Issue No. 2009/4031
Case No. [REDACTED]
Hearing Date: July 8, 2009
Shiawassee 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on July 8, 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 married, 42-year-old high school graduate with an unskilled, part-time work history (cashier/waitress) who has remained unemployed since 2007.
2. Claimant stands 5'2" tall and typically weighs approximately 90 pounds, which falls below the healthy range per Body Mass Index (BMI) scoring (normal=18.5-24.9; claimant's BMI=17.4).
3. On January 26, 2009, claimant applied for disability-based MA/SDA.
4. When that application was denied, claimant filed a written hearing request dated April 8, 2009.

5. Claimant's hearing was held by conference telephone on July 8, 2009.
6. Claimant's right foot was seriously injured in a lawnmower accident at age three which resulted in complex, right-sided residuals (biomechanical lower back pain and persistent sacroiliitis) growing progressively worse with age (Department Exhibit #1, pgs 3 and 70).
7. Claimant's medical records document her 2007 hospitalization with discovery of Lyme Disease, as well as a history of the Epstein-Barr virus, Candida esophagitis, iron and B-12 deficiencies, and moderate, diffuse right tibia/fibula osteopenia (Department Exhibit #1, pgs 80, 92, 103, 108, 110, 112 and 149).
8. Since a February 14, 2008 fall on the ice, claimant has had a significant increase in lower back pain, mostly on the right; multiple pain injections have provided only temporary relief (Department Exhibit #1, pgs 42, 70, 90, 96 and 119).
9. Claimant's July 2008 CT scan verified a likely central disc herniation at L5-S1 with no surgical intervention as of her hearing date (7/8/09)(Department Exhibit #1, pgs 35-36).
10. Two months earlier (5/08), claimant's previous CT scan also noted this suspected disc herniation and confirmed mild central canal stenosis at the L4-L5 level (Department Exhibit #1, pg 54).
11. In June 2008 (7 months before claimant filed her disputed disability application), claimant's treating podiatrist completed a medical assessment of her residual functional capacity which precludes her from performing even sedentary work on a regular basis due to traumatic, partial amputation in childhood (Department Exhibit #1, pgs 16-18)(See also Finding of Fact #6 above).
12. One year earlier, claimant's treating doctor completed the same form agreeing with the podiatrist's conclusion, except his assessment was based on claimant's documented lower back problems (Department Exhibit #1, pgs 19-21)(See also Finding of Fact #8-#10 above).
13. Since then, claimant also has been placed on cardiac medications for ongoing arrhythmias (first [REDACTED], then [REDACTED])(Department Exhibit #1, pg 110).

14. At the hearing on July 8, 2009, claimant stated her doctor had just prescribed a cane for ambulation hoping for pain reduction and to keep her safe.
15. Claimant is restricted from performing many daily living activities due to ongoing pain despite her compliance with the [REDACTED] and [REDACTED] daily dosage schedules.
16. Claimant testified she cannot sit, stand, walk, lift, carry, bend, etc. for extended periods due to chronic pain and upcoming constant cane usage.

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).

Under the Medicaid (MA) program:

"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.

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).

In claimant's case, the ongoing pain and other non-exertional symptoms she describes (insomnia, depression, anxiety) are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

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).

These same steps are applied in SDA cases. Claimant has not been employed, even part-time, since 2007. As such, this analysis must move to Step 2.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical and/or mental limitations upon her ability to perform basic work activities.

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.

In the third step of the sequential consideration of a disability claim, 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).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant cannot return to her past relevant work experience because those jobs are completely outside the scope of her physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as “what can you still do despite you limitations?” 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant’s extensive medical record and the Administrative Law Judge’s personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant’s exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant’s age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant’s limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Under these circumstances, claimant is disabled according to MA/SDA program rules. Consequently, the department’s denial of her January 26, 2009 MA/SDA application 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 was not disabled for MA/SDA eligibility purposes.

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

1. The department shall process claimant's January 26, 2009 MA/SDA application, and shall award her all the benefits which she may be entitled to receive as long as she meets the remaining financial and non-financial eligibility factors, including having no "final" Social Security Administration (SSA) decision opposing these findings (i.e., an SSA denial).
2. The department shall review claimant's medical conditions for improvement in March 2012, unless her Social Security disability status is approved by that time.
3. The department shall obtain all updated medical evidence from claimant's treating podiatrist, physicians, surgeons, physical therapists, pain clinic notes, hospitalizations, etc. regarding her continued treatment, progress and prognosis at review.

_____/s/_____
Marlene B. Magyar
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 21, 2011

Date Mailed: March 21, 2011

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.

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