

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: 2009-26904

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 6, 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 August 6, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by 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 37-year-old nonsmoker/nondrinker who does not have any physical or mental impairments which interfere with her ability to fully perform self cares (bathing, dressing, grooming, etc.) or basic work activities (driving, shopping, cooking, cleaning, etc.).

(2) Claimant lives independently in [REDACTED], but her minor son routinely spends overnights with her (his father has primary custody).

(3) Claimant is a Certified Nurses' Aide (CNA) and most of her past relevant work was in this capacity but she has not been employed anywhere since March 2009 (Department Exhibit #1, pg 18).

(4) Claimant indicated she has a remote Carpal Tunnel Syndrome diagnosis stemming from a former computer embroidering job (repetitive motion) which resolved after she left that position (Department Exhibit #1, pg 10).

(5) On April 6, 2009, claimant filed an application for a disability-based monthly cash grant (SDA) because she was no longer employed (See also Finding of Fact #3 above).

(6) Claimant is a high school graduate with extensive post-secondary education; in fact, as of SDA application filing, claimant was still attending [REDACTED] (Department Exhibit #1, pgs 4, 20 and 21).

(7) On December 1, 2008, claimant underwent an independent mental status examination which states in relevant part:

As it stands now she is working part-time and driving to [REDACTED] [REDACTED] for classes two days per week. Her school and work schedule appear to constitute the equivalent of a full time work schedule and she is not reporting that she is unable to maintain that (Department Exhibit #1, pgs 1 and 2).

(8) Claimant's mental diagnoses were: (1) Personality Disorder NOS; (2) Depressive Disorder; and (3) Attention Deficit Hyperactivity Disorder (Department Exhibit #1, pg 2).

(9) On April 27, 2009, claimant's treating doctor completed a Medical Examination Report (DHS-49) verifying she has no physical limitations and setting forth his two-pronged

opinion regarding Tourette's Syndrome vs Somatization Disorder as her primary diagnosis (Department Exhibit #1, pg 23).

(10) On August 4, 2009, he clarified this opinion further in writing which states:

[Claimant] is under my care for a movement disorder consisting of vocal and motor tics. The symptomatology is suggestive of a diagnosis of Tourette Syndrome with the exception of the fact that her symptoms started after the age of 30 years. This would rule out the diagnosis of Tourette Syndrome unless she had tics starting in childhood that were unnoticed. The vocal tics with coprolalia (utterance of obscene words) would make it difficult for her to work in her profession as a CNA (nurses' assistant) (Client Exhibit A, pg 4).

(11) On August 6, 2009, claimant's SDA appeal hearing was held.

(12) At that time, claimant stated her treating doctor recently started her on [REDACTED] (a blood vessel relaxer) for this condition which seemed to be effective in relieving her symptoms.

(13) Likewise, claimant acknowledged she was not taking any other medications as of the hearing date.

CONCLUSIONS OF LAW

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).

It must be noted Michigan administers the federal Medicaid (MA) program in addition to its own State Disability Assistance (SDA) monthly cash grant program which is in dispute in this case. Michigan's SDA program differs from the federal MA program in one way only, specifically, the alleged impairment must be severe enough to render an applicant incapable of

performing any type of substantial gainful work activity for a continuous 90 day period, rather than the continuous 12 month period required by MA rules. Because these programs are otherwise identical (except for duration) Michigan applies the federal rules when determining whether an applicant is SDA eligible. These rules 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.

...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).

...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).

...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).

...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 record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...[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 [SDA duration = 90 days].

...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).

[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).

Claimant does not qualify for the monthly cash grant she seeks because she has not established the existence of a physical or mental condition, or combination of conditions, which would prevent substantial gainful work activity for the requisite duration (90 days). In fact, nothing in claimant's file establishes she is physically or mentally incapable of working in a wide variety of jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Therefore, claimant's disputed SDA application must remain denied, in concurrence with the department's State Hearing Review Team (SHRT) decisions dated July 1, 2009 and August 11, 2009.

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 SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: January 19, 2010

Date Mailed: January 20, 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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