

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: 2009-27026

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 6, 2009

Clare 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 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, 52-year-old high school graduate ([REDACTED]) who is medically obese at 5'3" tall and 205 pounds (BMI=36.3); she resides with her significant other in [REDACTED].

(2) Claimant has an unskilled work history in cashiering, fast food positions and bus driving but she has not been employed anywhere since September 2008 (Department Exhibit #1, pg 315).

(3) On February 6, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(4) When that application was denied, claimant filed a timely hearing request to dispute the issue.

(5) Claimant's hearing was held on August 6, 2009.

(6) Claimant alleges she is completely unable to engage in any type of substantial gainful work activity secondary to ongoing musculoskeletal residuals from a July 1, 2008 motor vehicle accident, namely chronic neck/back/shoulder pain and headaches (Department Exhibit #1, pgs 195-197).

(7) At hearing, claimant requested a record extension to submit updated medical evidence and this request was granted.

(8) On September 9, 2009 and October 20, 2009, the State Office of Administrative Hearings and Rules (SOAHR) received claimant's submissions by mail and the presiding Administrative Law Judge promptly forwarded claimant's evidence to the department's State Hearing Review Team (SHRT) for post-hearing reviews.

(9) On October 30, 2009, SHRT issued their final decision which states in relevant part:

Please reference prior State Hearing Review Team (SHRT) determinations dated 07/08/09 and 09/16/09. Allegations of spinal degeneration/pain were considered.

Claimant [allegedly] provided “new” evidence to be reviewed, but the evidence provided is just duplicate copies of previously submitted evidence.

There is no change to prior determinations made by the SHRT. This application is denied as there is no severely impairing condition that would prevent gainful employment. Medicaid-P, retroactive Medicaid-P and State disability are denied by this decision. Listing 1.04 was considered in this determination.

(10) Claimant has no history of psychiatric treatment or hospitalizations and she is not currently engaged in any mental health treatment or counseling; however, her treating physician has prescribed an antidepressant (██████████) for self-reported depression.

(11) An independent psychological examination conducted on September 19, 2008 found no cognitive/mental/emotional deficits exist in claimant’s case (i. e., her mental status was “perfectly normal”)(Department Exhibit #1, pgs 294-300).

(12) Claimant’s treating physician has prescribed (██████████) twice daily and a generic muscle relaxant three times daily for claimant’s reported pain symptoms.

(13) Shortly after claimant’s motor vehicle accident (██████████) she underwent a cervical spine MRI scan which revealed “relatively mild degenerative changes” at C3-C4 and C4-C5 (Department Exhibit #1, pgs 291 and 292).

(14) The following month (9/12/08) claimant underwent a thoracic spine MRI scan which revealed minimal disc protrusion at T8-T9 with no other significant degenerative changes noted (Department Exhibit #1, pgs 291 and 292).

(15) These test results are consistent with cervical x-rays and a cervical CT scan taken two days post accident () which also revealed minimal degenerative changes and no evidence of fracture, stenosis or herniation (Department Exhibit #1, pg 290).

(16) Claimant started treating with the () in December 2008; she reported she was still associated with this clinic as of her August 6, 2009 hearing date and the updated medical evidence she submitted confirms ongoing treatment.

(17) On January 14, 2009, claimant underwent an extensive Functional Capacity Evaluation (FCE) as part of her initial spine clinic assessment (Department Exhibit #1, pgs 221-258).

(18) Claimant tested as having the capacity for light physical activity below the waist with less than sedentary physical activity above the waist due to her right extremity weakness and limitations on repetitive gripping/grasping, as well as a right upper extremity overhead lifting prohibition (Department Exhibit #1, pgs 257 and 258).

(19) Retesting at a later date was recommended to monitor claimant's progress through rehabilitation, at () (Department Exhibit #1, pg 257).

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

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.

...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).

...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 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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

[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).

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 disqualified from receiving MA/SDA at Step 1, because she has not been gainfully employed since 2008 (See Finding of Fact #2 above).

At Step 2, claimant's accident residuals have left her with some range of motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's pain appears capable of adequate pain management with current prescription medications and the other conservative treatment methods being employed (e. g., massage, pain injections, chiropractic adjustments, etc.), given the objective test results submitted (See Finding of Fact #13-#15 above).

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed physical impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing or alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record reveals claimant has not been medically cleared to return to cashiering, as that job consists of excessive standing and repetitive motion contraindicated by the FCE she underwent on January 4, 2009 (See Finding of Fact #17 and #18 above). As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 52-year-old individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform light work, as that term is defined above.

Claimant's biggest barriers to employability appear to be her displacement from her most recent job as a cashier at the local casino's eating outlet, in combination with her lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with her skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions, because she can return to other light work as directed by Medical-Vocational Grid Rule 202.13.

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/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: February 3, 2010

Date Mailed: February 4, 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.

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