

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

IN THE MATTER OF:



Reg No. 200927091
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 4, 2009
Genesee 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 August 4, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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, 51-year-old female with a general equivalency diploma (GED) who was diagnosed with scoliosis as a teenager (Department Exhibit #1, pgs 23-24 and Department Exhibit #3, pg 3).
2. Claimant has several years' experience as a furniture salesperson, and also as a manager, but she has not worked anywhere since September 2008, three months prior to undergoing a decompressive lumbar laminectomy at L5-S1 for resolution of significant right radicular pain which was not responsive to conservative treatment (Department Exhibit #1, pgs 24 and 42-43).

3. A March 17, 2009 statement from claimant's neurosurgeon authorized a return to work full time that month, with a subsequent, three-month restriction to sedentary work only (Department Exhibit #1, pg 50).
4. On March 17, 2009, claimant applied for disability-based MA/retro-MA (Department Exhibit #1, pg 1).
5. If claimant's application had been approved, the expenses associated with her spinal surgery and any further medical treatment would have been covered by MA; however, the department denied that application by written notice dated May 11, 2009.
6. Claimant promptly requested a hearing to dispute the department's disability disallowance, held by conference telephone on August 4, 2009.
7. Claimant resides alone in an upper apartment; she has a valid driver's license and access to a roadworthy vehicle.
8. As of the hearing date, claimant was independent in most activities of daily living except heavy lifting, excessive standing/walking/bending, etc., not uncommon in patients with orthopedic residuals following surgery; additionally, she has continued to use a cane for balance/stability since the surgery (Department Exhibit #1, pgs 25-27).
9. As of the hearing date, claimant was taking prescription medications ([REDACTED]) as needed for pain management.
10. Additionally, claimant was taking [REDACTED] as prescribed by her treating physician for approximately nine years to reduce ongoing anxiety/depression; she reported this psychotropic medication has worked the best of all she's tried.
11. Claimant has been involved in outpatient community mental health counseling to address her anxiety/depression issues.
12. A Mental Residual Functional Capacity Assessment completed in March 2009 verifies claimant is not significantly limited in any of the cognitive or emotional areas required to be considered in the disability determination process (Department Exhibit #1, pgs 44-47).

13. Likewise, a Medical Needs Assessment completed in March 2009 verifies claimant needs no physical assistance with basic living activities; however, any employment-related activity would require sit/stand options; all claimant's other body systems were assessed as normal (Department Exhibit #1, pgs 29-30).
14. In May 2009, claimant was diagnosed with osteopenia (a precursor to osteoporosis) by bone density scanning, for which [REDACTED] has been prescribed.
15. Claimant slipped on the ice in March 2009, which resulted in a small radial tear of her left lateral malleolus; however, all other tendons and ligaments were intact, with only mild degenerative changes evidenced by a left knee MRI scan dated March 24, 2009 (Client Exhibit A, pg 8).

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).

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 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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).

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

At Step 2, claimant's orthopedic residuals, in combination, 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 degenerative arthritis and post-surgical pain appear fully capable of adequate pain management with the prescription medications currently being prescribed.

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 alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention she cannot return to furniture sales in her current condition because such position requires excessive standing, walking, bending, etc., which is precluded by claimant's orthopedic condition. As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 51-year-old individual with a high school education and a history of skilled management and unskilled retail positions. Consequently, at Step 5, this Administrative Law Judge finds from the medical evidence of record, that claimant retains the residual functional capacity to perform at least sedentary or perhaps even light work, as those terms are defined above.

Claimant's biggest barrier to employability appears to be displacement from her longstanding professional furniture sales career, in combination with her lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with her skills, interests, and abilities. Claimant is not disabled under the MA definitions because she can return to other sedentary and/or light work, as directed by Medical-Vocational Rules 201.13 and 202.20. As such, claimant's disputed disability application must remain denied.

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 eligibility standards.

Accordingly, the department's action is AFFIRMED.

/S/

Marlene B. Magyar
Administrative Law Judge
for Duane Berger, Acting Director
Department of Human Services

Date Signed: January 10, 2010

Date Mailed: January 10, 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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