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: 2009-28037
Issue No: 2009/4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
September 1, 2009
Ottawa 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 September 1, 2009. Claimant personally appeared and testified. She was assisted by [redacted].

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, 48-year-old, tobacco-dependent female with a general equivalency diploma (GED) who stands approximately 5'1"tall and weighs approximately 105

pounds; she is right hand dominant, per self report (Department Exhibit #1, pgs 30, 62-63 and 70-71).

(2) Claimant has an unskilled employment history in factory work (assembling corrugated boxes), motel housekeeping and grocery store stock/deli work, but she left her most recent stock job in March 2008 and she has remained unemployed since then.

(3) At age 43, claimant underwent a bone density scan which revealed osteoporosis in both her hips and her lumbar spine, currently stabilized with [redacted] (Department Exhibit #1, pgs 4, 43 and 62).

(4) Pulmonary function testing done in December 2005 confirms moderate, Chronic Obstructive Pulmonary Disease (COPD) not uncommon in patients like claimant with an extensive tobacco abuse history; smoking cessation has been repeatedly recommended (Department Exhibit #1, pgs 4, 24, 29, 30 and 47-49).

(5) On February 11, 2009, claimant applied for disability-based MA/SDA.

(6) Claimant's medical treatment records verify a lengthy history of repeated skin flare-ups initially attributed to general eczema, and treated conservatively with steroids and topical ointments (Department Exhibit #1, pgs 10, 12, 15 and 21).

(7) In February 2008, claimant had a break-out which covered her palms, soles, arms, legs and trunk with multiple, oozing, itching blisters so severe a dermatological consult was recommended (Department Exhibit #1, pg 31).

(8) In March 2008, claimant underwent skin patch testing which verifies she has markedly positive reactions to multiple contact allergens.

(9) Claimant was placed on an antibiotic topical salve and [redacted] taper at that time (Client Exhibit A, pgs 1-16).

(10) The next year, specifically on February 9, 2009, claimant was examined by an allergy specialist, who assessed her condition as follows:

> …The patient describes a vigorous reaction with vesiculation and ulceration which required oral corticosteroids to resolve. She states that following the patch testing there were lesions which lasted for six months after this experience. She states that she is allergic to compounds found in paper products and that she is unable to handle paper which is problematic not only at home but certainly problematic in her employment in various warehouse situations where she is required to handle boxes. She states that the utilization of cotton or rubber gloves does not work either in preventing this from occurring. This is consistent with how we understand the items to which she is allergic and the problems which they create. She states that when she is in contact with paper products or other substances to which she has known contact sensitivity she develops pruritus within ten minutes and that she develops a vesiculated, erythematous, pruritic rash which will last approximately one week even following the application of topical steroids. This syndrome was first noted approximately two years ago…
>
> …Exam of the skin was significant for fissures and lichenification of the intertriginous areas of the hands. The extremities were without cyanosis, edema, deformity, or clubbing.
>
> My assessment is one of severe allergic contact dermatitis and COPD.
>
> I suggested that it is significantly important for her wellbeing to avoid occupational contact with paper products as well as other substances known to be positive on her patch testing which, of course, is most likely going to disable from further employment…(Department Exhibit #1, pg 76 and 77).

(11) On March 3, 2009, a vocational rehabilitation counselor declined to offer claimant job placement services with his agency, stating as follows:

> [Claimant] suffers from rather severe allergic contact dermatitis. She is also diagnosed with COPD and scoliosis. I have studied her medical records and interviewed her at length. She has undergone patch testing which showed strong allergic reactions to multiple chemicals and compounds.

Her allergic contact dermatitis is persistent, and she must avoid contact allergins indefinitely. (Please refer to the medical documentation for details). She is unable to tolerate the use of vinyl, latex, and nitrile gloves for her hand dermatitis. Cotton gloves offer little protection.

The list of chemicals and compounds that [claimant] must avoid touching are numerous. One of the most notable chemicals on that list is formaldehyde. Formaldehyde and formaldehyde resin are found in all paper products, fabrics, cleansers and many other products. Having worked in paper mills, I am aware of how formaldehyde is used to improve the characteristics of paper. Toilet paper, paper towels, tissues, and cardboard all contain traces of formaldehyde. In addition, there are other chemicals such as slimicides and bleaching agents involved in paper manufacturing that can cause allergic reactions in some people.

Unfortunately, [claimant] is also allergic to DMDM Hydatoin used in adhesives, inks, cutting oils, herbicides, skin care products, hair products, makeup, and more.

Given the long list of chemicals that she must avoid [claimant] will not be able to work in any of our major industries: food service, manufacturing, retail, health care, and transportation. There are no jobs that she can perform within her restrictions without extensive education and training.

[Claimant] is unable to return to her former job at [redacted] where she worked as a stocker, material handler, and deli worker. She applied for services with our agency in Nov. 2008. She was hopeful that our agency would be able to find suitable employment for her. She enjoyed her job at [redacted] and was hoping to return to gainful employment. The loss of income has been stressful. She feels very restless at home and has been very frustrated with her difficult situation.

She is not a good candidate for job placement services with our agency. I informed her that we do not have any services that would benefit her (Department Exhibit #1, pgs 78 and 79).

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).

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.

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

> "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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant has not been gainfully employed since 2008; consequently, the sequential evaluation must continue.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical 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 any of her past work experience; consequently, an analysis of Step 5 is required.

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 PEM Item 261. Under these circumstances, claimant is disabled according to both MA and SDA program rules. Consequently, the department's denial of her February 11, 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 is not disabled under MA/SDA rules.

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

(1) The department shall process claimant's disputed MA/SDA application, and shall awared her all of the benefits to which she may be entitled, as long as she meets the remaining financial and non-financial eligibility factors.

(2) The department shall review claimant's condition for improvement in April 2012, unless Social Security disability status is awarded by that time.

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

Date Signed: April 20,2010

Date Mailed: April 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

cc: [redacted]