

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: 2009-4806
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 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 claimant's request for a hearing. After due notice, an in-person hearing was held on March 3, 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, 51-year-old smoker with a high school education; additionally, in 2005 she took some computer classes at [REDACTED] and mentored other students while doing so.

(2) Between 2002 and 2005 claimant worked as a legal secretary, until that firm closed (typing, phones, court filings, light office cleaning, light office filing).

(3) Claimant's other relevant work experience includes retail cashiering/stocking and restaurant cooking/prep work; her last job at [REDACTED] ended in 2007 due to lack of hours (Department Exhibit #1, pg 7).

(4) Claimant lives alone in a mobile home; her minor son was removed from her custody and placed in court ward status in the [REDACTED] due to a Childrens Protective Services (CPS) investigation centered around claimant's prescription medication abuse (Department Exhibit #1, pgs 16, 28 and 29).

(5) On July 23, 2008, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA).

(6) A [REDACTED] intake assessment dated April 23, 2008 indicates claimant is not working because she is awaiting disability for "chronic back problems" (Department Exhibit #1, pg 20).

(7) Claimant attributes her reportedly constant, excruciating, debilitating lower back pain to a remote surgical history in 1988 and 1990 for an original lumbar laminectomy/fusion with a redo two years later (Department Exhibit #4, pg 1).

(8) A [REDACTED] report dated November 1, 2007 diagnoses claimant with lumbago (Client Exhibit A, pg 1).

(9) Claimant stands 4'11" tall and is morbidly obese at 200 pounds (BMI=40.48) (Department Exhibit #1, pg 2).

(10) A July 31, 2008 Medical Examination Report (DHS-49) indicates claimant has high cholesterol and opined a functional capacity evaluation was necessary to determine her limitations secondary to her reported back pain (Department Exhibit #1, pg 9).

(11) On February 2, 2009, claimant underwent an independent examination (Department Exhibit #4, pgs 1-3).

(12) Claimant walked without use of an assistive device, but she did exhibit an antalgic gait; her dorsal spine flexion was limited to approximately 70 degrees, extension 20 degrees, left lateral flexion 20 degrees, right lateral flexion 20 degrees; claimant's grip strength was mildly decreased to approximately 4/5 bilaterally and an amputation of her index finger on the right hand just below the proximal interphalangeal joint was noted (Department Exhibit #4, pg 3).

(13) Two years earlier (2007) claimant was approved for physical therapy at [REDACTED]; her November 20, 2007 progress report notes she tolerated all exercises well without complaint of increased pain and she reported her back felt better (Client Exhibit A, pg 23).

(14) Claimant missed many of her therapy sessions and she was discharged on December 6, 2007 for lack of progress; a shoe insert prescription was dispensed at discharge to address her leg length discrepancy (Client Exhibit A, pgs 1-30; 18).

(15) A mental health intake assessment dated April 23, 2008 diagnosed claimant with Bipolar Disorder and authorized outpatient counseling services twice monthly; claimant's GAF at intake was 60 (normal) and her mental status/memory/cognitive function were normal (Department Exhibit #1, pgs 19 and 21).

(16) Claimant's subsequent outpatient progress note indicates she was stable; specifically, her June 9, 2008 assessment states her mood was euthymic, she was fully oriented

and she was not suicidal/homicidal or having any hallucinations/delusions (Department Exhibit #1, pg 22).

(17) Also in June, 2008, claimant reported she stopped taking [REDACTED] and [REDACTED] (formerly abused substances), but she wanted something for anxiety because she wanted to get her son back so the medication managing psychiatrist prescribed [REDACTED] (Department Exhibit #1, pgs 15-27; 22).

(18) Claimant is fully independent in all self cares and basic activities of daily living except driving because she has no car; however, claimant stated at the hearing she has a valid driver's license and she possesses the physical/mental ability necessary to drive.

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.

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.

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).

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).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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/SDA at Step 1, because she has not been gainfully employed since 2007 (See Finding of Fact #3 above). However, it must be noted at application claimant's stated reason for leaving that job was not in any way related to her allegedly disabling conditions; consequently, it fails to establish onset, duration or severity in this case.

At Step 2, claimant's diagnosed physical and mental impairments (lumbago and Bipolar Disorder) meet the *de minimus* level of severity and duration required to continue this evaluation. However, 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. Claimant's documented physical and mental impairments appear

fully capable of adequate symptom management as long as her current medication schedule is maintained.

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 fails to support claimant's contention she is physically/mentally incapable of returning to sedentary office work like she did between 2002 and 2005 (See Finding of Fact #2 above). Consequently, this analysis could end at Step 4, with a disability disallowance because claimant retains the physical/mental capacity to perform her past relevant work. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

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 diploma and some post-secondary computer training. In addition to sedentary office work, claimant has functioned in a number of light, unskilled positions. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant also retains the residual functional capacity to perform light work, as that term is defined above. Therefore, Medical-Vocational Rule 202.13 also directs a finding of not disabled. As such, claimant's disputed 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/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: May 27, 2009

Date Mailed: May 27, 2009

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:

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