

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: 2009-5271
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 2009
St Clair 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 February 24, 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 an intelligent, articulate, 63-year-old high school graduate with two Associates Degrees (Food Service Management/Dietary Management).

(2) Claimant stands approximately 5'4" tall and weighs approximately 138 pounds; she is right hand dominant.

(3) Claimant has a valid driver's license and she is fully independent in all self cares/basic daily living activities, including providing caretaking services to her disabled husband.

(4) On June 17, 2008, claimant filed a disability-based MA/retro-MA/SDA application.

(5) When that application was denied claimant filed a timely hearing request.

(6) Claimant's hearing was held on February 24, 2009.

(7) At the hearing, claimant submitted additional medical records which verify she was hospitalized overnight in January 2009 (1/29/09-1/30/09) for stabilization of Addison's Disease (Client Exhibit A, pgs 4-9).

(8) This report indicates claimant is a chronic, ongoing nicotine abuser consistent with a chest x-ray taken on admission which shows evidence of persistent, right basilar infiltrates when compared to previous studies (Client Exhibit A, pgs 4, 7 and 8).

(9) Claimant was discharged in stable condition on oral steroids (10 mg [REDACTED]/1 x daily) frequently used in Addisons's patient maintenance, along with a 10 day supply of [REDACTED] to clear up a urinary tract infection discovered while she was inpatient, as well as [REDACTED] and synthroid for asymptomatic hypothyroidism secondary to the Addison's.

(10) Claimant has an unskilled work history (e. g., [REDACTED] waitressing and wholesale flower shops) but she has not been employed anywhere since 2006 when the shop she worked in closed.

(11) In claimant's MA/SDA application month (6/08) she spent 10 days in the hospital (6/8/08-6/18/08) with significant weight loss secondary to malnutrition, which had resolved by

her February 2009 hearing date (Department Exhibit #1, pgs 37 and 38)(See also Finding of Fact #2 above).

(12) At examination of claimant's teeth during this hospitalization the records note extremely poor dentition consistent with an independent medical examination conducted on September 22, 2008, which states in relevant part:

The patient has had a history of poor dentition and is trying to get her Medicaid card so she can get her teeth pulled. She has had a history of chronic otitis and states that she is on a [REDACTED] dose pack for treatment for it.

The patient was also hospitalized in June of 2008 for weight loss. She has maintained a stable weight over the past year. She does have a history of alcoholism and continues to drink on occasion. She was told that her liver enzymes were elevated during this recent hospitalization. She denies any jaundice, encephalopathy, or DT's or detoxifications.

The patient has not worked since 2006. She used to work at a flower shop. She stopped working at that time because "the boss had died." She now lives with her family in a home. She can do her household chores and activities of daily living. She is able to shop, cook, and drive. She still enjoys reading, gardening and has to take care of her husband who is disabled. She denies any problems sitting, standing, or walking except when she has these intermittent spasms. She states she has difficulty doing any overhead lifting but can lift about 30 pounds to her waist (Department Exhibit #1, pgs 35 and 75).

(13) In June 2008, claimant underwent a hearing test and CT/MRI scans to address her poor hearing issues (Department Exhibit #1, pgs 15-21).

(14) Claimant was diagnosed with chronic bilateral mastoiditis and some mixed hearing loss which does not significantly affect her normal reception as evidenced by the fact she had no difficulty hearing, understanding or responding to questions asked during her February 24, 2009 disability denial hearing which was held by telephone conference.

(15) Likewise, the independent medical examination conducted on September 22, 2008 notes claimant's mental affect was stable, her gait was normal, her grip strength was intact and her bilateral manual dexterity was unimpaired, with no evidence of joint laxity/crepitation/effusion during full range of motion testing (Department Exhibit #1, pgs 71-75).

(16) Although claimant's cervical range of motion was somewhat compromised, she stated she has not had her cervical spine evaluated and she is not undergoing any active treatment for it (e.g., physical therapy, pain medications, massage, heat/cold packs, etc.)(Department Exhibit #1, pgs 71 and 73).

(17) As of claimant's hearing date her only prescription medications were [REDACTED] and [REDACTED] per self report.

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).

... [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).

...[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.

...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).

...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).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

[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 MA/SDA disability benefits she seeks because she has not established the existence of a medically severe condition, or combination of conditions, which could reasonably be expected to prevent employability for the necessary, continuous durations required under the governing regulations. Unfortunately, nothing in claimant's medical records establishes she is incapable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Put simply, claimant's disputed application must remain denied based on lack of severity, in concurrence with the department's State Hearing Review Team (SHRT) decisions dated December 9, 2008 and March 20, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's June 17, 2008 MA/retro-MA/SDA application.

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 1, 2010

Date Mailed: February 2, 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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