

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: 2009-16331

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 20, 2009

Kalamazoo 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 May 20, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's December 15, 2008 Medicaid (MA) and State Disability Assistance (SDA) application?

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, 58-year-old female with a general equivalency education (GED) and two years of post-secondary study at [REDACTED] [REDACTED] in Computer Programming/Data Entry (degree obtained)(Department Exhibit #1, pgs 11-14; Client Exhibit A, pg 17).

(2) Claimant stands approximately 5'4" tall and is medically obese at approximately 211 pounds (BMI=36.2); she is right hand dominant, per self report.

(3) Claimant lives independently in an apartment located in [REDACTED] she does not have a valid driver's license so she uses the public bus system when needed; additionally, she took the bus to/from her disability hearing on May 20, 2009.

(4) On December 15, 2008, claimant applied for disability-based medical insurance (MA) and a monthly cash grant (SDA).

(5) Claimant alleges she is completely unable to engage in any type of substantial gainful work activity based on reportedly debilitating pain across multiple body levels (e. g., stomach, chest, back, feet, etc.), in combination with self-reported shallow breathing, slow heartbeat, lightheadedness, seizures, confusion, itching, etc. (Client Exhibit A, pgs 1-22).

(6) Claimant's past relevant work history includes sedentary light administrative job duties and working as a spec. production technician at [REDACTED] museum/planetarium, but claimant left [REDACTED] in June 2002 and she has remained unemployed since then (Department Exhibit #1, pg 14).

(7) In November 2008 (approximately one month before MA/SDA application filing), claimant underwent multiple-view x-rays of both feet (Department Exhibit #1, pg 19).

(8) These x-rays verify bilateral plantar calcaneal spurring and valgus deformities, as well as mild degenerative changes in both mid foot areas (Department Exhibit #1, pg 19).

(9) Additionally, claimant's medical history is positive for a remote hospitalization through the Emergency Room (ER) between September 3, 2003 and September 13, 2003, secondary to acute cholecystitis caused by an obstructing common bile duct stone (Department Exhibit #1, pgs 21-23 and 41-42; Client Exhibit A, pg 12).

(10) On September 10, 2003, claimant underwent laparoscopic gall bladder removal in conjunction with removal of the blocking stone; at discharge, no complications were noted and claimant was instructed not to do any strenuous activity for the next 7 to 10 days (Department Exhibit #1, pgs 21 and 22).

(11) During this hospitalization, claimant's abdominal CT scan incidentally revealed mild lower lumbar facet joint osteoarthritis and moderate lower lumbar degenerative disc disease (Client Exhibit A, pg 12).

(12) More recent doctor's visit notes, dated February 7, 2008 and February 21, 2008, indicate claimant was exhibiting trigger point plantar fasciitis pain in her right foot which was relieved by deep tissue massage; home soda can/tennis ball usage for instep massage was recommended, as was massage for claimant's generalized myofascial pain (Client Exhibit A, pgs 17 and 18).

(13) These medical records also indicate claimant's treating doctor has prescribed standard prescription pain medications and a muscle relaxant for pain management (Department Exhibit #1, pg 14; Client Exhibit A, pgs 17-19).

(14) On April 7, 2008 and June 5, 2009, the department's State Hearing Review Team (SHRT) doctors issued pre and post-hearing decisions agreeing with the local office denial of claimant's disputed application, based on a finding she could return to sedentary work (See Finding of Fact #6 above).

(15) As of claimant's May 20, 2009 disability hearing, she was still waiting for a hearing date to appeal the Social Security Administration's (SSA's) denial of a disability application she filed in 2007, per self report (Department Exhibit #1, pg 11).

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 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.

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.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines also are applied in SDA eligibility determinations, except for the shorter durational period referenced above (90 days). These guidelines state in relevant part:

...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).

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you...

We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

...We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(4).

[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).

At application, claimant has the burden of proof pursuant to the following section:

...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 federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with claimant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in part:

...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).

...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).

...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).

Additionally, Social Security Ruling 96.4p (SSR 96.4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable mental or physical impairment,” an individual must be found not disabled at Step 2 of the sequential

evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

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.

In the present case, claimant's chronic, debilitating, excruciating pain complaints across multiple body systems, combined with her reported non-exertional symptoms appear consistently disproportionate to the objective medical evidence contained within this file as it relates to claimant's ability to perform substantial gainful work activity. Furthermore, claimant's current prescription medication schedule appears fully capable of adequate pain management for the diagnosed conditions, as long as compliance is maintained. Accordingly, this Administrative Law Judge finds claimant's veracity to be lacking, and thus, she has given less weight and credibility to claimant's subjective testimony in this regard. Nevertheless, this Administrative Law Judge will continue the sequential analysis set forth above.

When applying the sequential analysis, this Administrative Law Judge finds claimant remains eligible at the first step since she is not currently working, and she has not been gainfully employed since 2002 (See Finding of Fact #6 above). 20 CFR 416.920(b).

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. As such, the analysis must continue.

The third step of the analysis looks at whether an applicant meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not; consequently, the analysis must continue.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the demands of the work done by the applicant in the past. 20 CFR 416.920(e). In this case, after an objective, full review of all the medical evidence submitted, this Administrative Law Judge concurs with the department's State Hearing Review Team (SHRT) who found claimant capable of returning to any number of sedentary work jobs currently existing in the national economy similar to those she engaged in while employed. As such, claimant's disputed application must remain denied at the fourth step of the required analysis.

In closing however, this Administrative Law Judge would like to address another federal regulation section which may apply in claimant's case. It provides: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also states: "If the SSA determination is changed, the new determination is also binding on the department." 42 CFR 435.541(a)(2)(b)(ii). (See Finding of Fact #15 above). These rules have been adopted by the department in BEM Item 260. Therefore, if the Social Security Administration (SSA) has since issued claimant a favorable ruling during

the pendency of this case, that ruling would be controlling with regard establishing her disability status and onset date.

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 December 15, 2008 MA/SDA application based on her ability to return to sedentary work activities.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: April 29, 2010

Date Mailed: April 30, 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:

