

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

IN THE MATTER OF:



Reg No. 200926031  
Issue No. 2009/4031  
Case No. 1 [REDACTED]  
Load No. [REDACTED]  
Hearing Date: August 12, 2009  
Ingham 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 12, 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 a single, 48-year-old long term smoker with a limited education (completed 11<sup>th</sup> grade) who is medically obese at approximately 5'3" tall and approximately 250 pounds (BMI=44.3).
2. Claimant has an unskilled work history (factory, janitorial, patient care) but she has not been employed anywhere since 2001.
3. On December 8, 2008, claimant applied for disability-based MA/SDA.

4. Claimant has had insulin-dependent diabetes since 2007 (not uncommon in morbid obesity patients); however, the relevant medical records reveal her blood sugar levels have been fairly well-controlled by history (Department Exhibit #1, pgs 22-24).
5. Claimant has severe degenerative joint disease (back, knees, shoulders); in June 2008, an independent medical examiner noted pervasive tenderness/decreased range of motion, and he limited her to less than a full range of sedentary work activity (Department Exhibit #1, pg 24).
6. A September 13, 2008 left upper extremity x-ray verifies claimant had a fairly large (7-8 mm) full thickness tear involving her supraspinatus tendon with delaminating components.
7. As of claimant's August 12, 2009 disability hearing date surgical repair of claimant's left knee also had been medically recommended but it was not undertaken due to claimant's lack of medical coverage.
8. Additionally, prescription medications have not effectively reduced or controlled claimant's chronic daily pain levels.
9. As of claimant's hearing date, she also had been diagnosed with rheumatoid arthritis and was taking Plaquenil for pain symptom management, again without much overall success.
10. Claimant's medical records also verify she underwent lumbar facet blocks at L4-L5 and L5-S1 in an attempt to control her low back pain (Department Exhibit #1, pg 1).
11. Claimant testified the result was good at first but fleeting (when the block wore off her pain returned unmitigated).
12. Claimant needs assistance with most basic activities of daily living, and also, she always needs to use a motorized cart when her caregiver takes her to the grocery store (Department Exhibit #1, pgs 56-59).
13. Claimant's treating doctor agreed with the independent medical examiner in limiting her to less than a sedentary level of activity when he completed several Medical Needs assessments in 2007 (Department Exhibit #1, pgs 50, 61 and 62).

14. Claimant's other chronic symptom is shortness-of-breath presumably caused by diagnosed sleep apnea because she was using a C-pap machine nightly as of her hearing date; however, the medical records contained within her file to that point in time did not address this impairment.
15. In addition to chronic pain and shortness-of-breath, claimant experiences intermittent lower leg swelling, unrestful sleep, depression and anxiety secondary to her compromised physical condition.

### **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

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).

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).

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 in several years.

At Step 2, claimant's diagnosed conditions are of sufficient duration and severity to pass the *de minimus* hurdle as defined by *Higgs v Bowen*, 880 F2d 860, 862(6<sup>th</sup> Cir 1988).

At Step 3, an assessment of Social Security Ruling 02-1p is appropriate. This Ruling states in relevant part:

...Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of co-existing or related impairments to the extent that the combination of impairments meets the requirements of a listing.

In light of claimant's co-existing impairments, this analysis will continue.

At Step 4, claimant worked in jobs that are classified as medium exertional work activities under the definition found at 20 CFR 416.967(c). The medical evidence of record supports a conclusion claimant is now completely incapable of returning to that level of exertion on a sustained basis. As such, 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 (6<sup>th</sup> 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 medical record and an objective assessment regarding the credibility of claimant's testimony at hearing, this Administrative Law Judge finds claimant's morbid obesity, when combined with her musculoskeletal and pulmonary impairments and their attendant symptoms render her incapable of performing a full range of even sedentary work on a regular and continuing basis. This finding is consistent with the examining physicians' assessments, which must be given due deference. Additionally, this Administrative Law Judge finds the department failed to provide any vocational evidence establishing claimant had the residual functional capacity for any substantial gainful activity, and that, given claimant's age, education and work experience, there are significant numbers of jobs existing in the national economy which she would perform despite her limitations. Accordingly, this Administrative Law Judge concludes claimant was disabled for MA/SDA eligibility purposes at all times relevant to her December 8, 2008 MA/SDA application. Consequently, the department's denial of that 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 was/is not disabled by MA/SDA eligibility standards.

Accordingly, the department's denial of claimant's December 8, 2008 MA/SDA application is REVERSED, and this case is returned to the local office for the following:

1. The department shall process claimant's disputed application and shall award her 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 in January 2013, unless she is approved eligible for Social Security disability benefits by that time.

3. The department shall obtain updated medical evidence from claimant's treating physicians regarding her treatment, progress and prognosis at review, if necessary.

**SO ORDERED**

/S/

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

Date Signed: January 12, 2011

Date Mailed: January 13, 2011

**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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