

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: 2009-3262

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 4, 2009

Lapeer 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 February 4, 2009. Claimant personally appeared and testified. She was assisted by

[REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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 42-year-old high school graduate with a valid driver's license who was living with her retired fiancé in [REDACTED], as of her February 4, 2009 disability hearing date.

(2) Claimant was not involved in any mental health treatment or counseling as of that date, but an independent psychological assessment conducted on January 22, 2010 notes she returned to outpatient ([REDACTED]) counseling and she was taking [REDACTED], [REDACTED] for recurrent depression (See Newest Psychological Assessment, pg 4A).

(3) In conjunction with this assessment, the licensed psychologist who evaluated claimant completed a Mental Residual Functional Capacity Assessment (DHS-49E) which opines claimant is not significantly limited in the majority of the mental/emotional/social areas required to be considered during the disability determination process, with some moderate limitations in memory/understanding/concentration noted (See Newest Psychological Assessment, pgs 2A and 3A).

(4) Claimant stands approximately 5'2" tall and is morbidly obese at approximately 284 pounds (BMI=51.9); she is ambidextrous, per self report.

(5) Claimant has been diagnosed with noninsulin dependent diabetes mellitus and high blood pressure, not uncommon in morbidly obese patients and adequately controlled with claimant's current prescription medications ([REDACTED]), according to a June 19, 2009 Medical Examination Report (DHS-49) completed by her treating doctor two months after her disputed MA/retro-MA application was filed (Department Exhibit #1, pgs 6 and 7).

(6) Claimant's treating doctor also noted her condition was stable, she had no physical limitations, and she was capable of frequently lifting as much as 20 pounds and occasionally lifting as much as 25 pounds during a routine workday (Department Exhibit #1, pg 7).

(7) Claimant reports she has chronic, excruciating, debilitating daily pain throughout her entire musculoskeletal system, but the medical evidence of record lacks any objective test results to support a condition (other than obesity) consistent with claimant's self-reported pain.

(8) Claimant acknowledged at hearing her past back x-rays were negative; however, she sometimes chooses to use a non-prescribed cane for balance/stability and she always uses a motorized riding cart when she grocery shops.

(9) Claimant's past relevant work history is in school bus driving; however, she left this job in 2005 due to a severe diverticulitis flare-up which necessitated removal of a portion of her colon with temporary (3 month) colostomy placement and subsequent reversal, also in 2005 (Department Exhibit #1, pgs 54 and 88-89)

(10) Claimant reported during her disability hearing on February 4, 2009, she has not had any additional hospitalizations for acute diverticulitis episodes since 2005.

(11) Claimant's treating doctor has prescribed [REDACTED] for recurrent GERD, and also, claimant stated he has instructed her to refrain from seeds, hulls, nuts, etc., to keep her diverticulitis symptoms at bay.

(12) In January 2008, claimant was hospitalized briefly (1/6/09-1/9/09) secondary to a few days of abdominal discomfort which was largely resolved by admission (Department Exhibit #1, pgs 11 and 42-83).

(13) During this hospitalization, claimant underwent a colonoscopy which revealed a benign polyp in her descending colon; that polyp was removed without complications and claimant also was scheduled for outpatient laparoscopic removal of a left ovarian complex cyst (Department Exhibit #1, pg 43).

(14) During claimant's independent psychological evaluation in January 2010, her malingering score was assessed as follows:

The Structured Interview of Reported Symptoms (SIRS) was administered to evaluate malingering and other forms of dissimulation or distortion. It assesses systematic deliberate distortions in the self report of symptoms. Of the 8 primary scale scores [claimant] is categorized as indeterminate on 5 of 8 scales and honest on 3 of 8 scales. There is some variability in her response pattern. Because of this variability a determination of her overall response style is difficult. Her supplemental scale indicates a high number of defensive symptoms that indicate she is endorsing a borderline high number of common foibles and problems (See Newest Psychological Assessment, pg 6A)

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).

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.

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.

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).

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).

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).

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/retro-MA at Step 1 because she has not been gainfully employed since 2005 (See Finding of Fact #9 above).

At Step 2, claimant's diagnosed physical and mental impairments, when combined, have left her with some exertional and non-exertional limitations. However, claimant's pain

complaints appear consistently disproportionate to the objective medical evidence contained within her file as it relates to her ability to perform substantial gainful work activity.

Additionally, claimant's malingering score on SIRS testing administered during the January 2010 psychological assessment was highly inflated, thus causing this Administrative Law Judge to question her veracity and give less weight to her subjective testimony in this regard.

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. This Administrative Law Judge finds claimant's current prescription medications are fully capable of adequate symptom management in this case, given the objective medical evidence presented. Nevertheless, giving claimant every benefit of doubt, this Administrative Law Judge will find the *de minimus* level of severity and duration exist in claimant's case, and thus, the analysis will proceed.

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 reveals claimant stopped school bus driving in 2005 due to significant medical treatment secondary to active diverticulitis. However, since then claimant's medical records reveal no further hospitalizations for this condition and her symptoms are being adequately managed with the standard protocol medications. As such, nothing on this record reveals a physical condition severe enough to prevent claimant from returning to school bus driving. Nevertheless, claimant's mental status evaluation does reveal some moderate

impairments in memory, understanding and concentration which may make a return to that type of high stress job unsafe for claimant or her minor passengers. Therefore, this Administrative Law Judge finds claimant cannot return to her past relevant work. As such, analysis of the very last step in the sequential evaluation process must be conducted.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of all documented impairments. Claimant is a younger individual with a high school education and an unskilled/semi-skilled work history. Consequently, at Step 5, this Administrative Law Judge finds from the medical and psychological evidence of record, that claimant retains the residual functional capacity to perform any number of unskilled, low stress, light or sedentary jobs currently existing in the national economy as those terms are defined above, despite her documented impairments. This finding is consistent with the department's State Hearing Review Team (SHRT) post-hearing decision dated March 18, 2010.

Claimant's biggest barrier to employability appears to be her lack of any recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities. Claimant is not disabled under the MA definitions, because she can return to other work, as directed by Medical-Vocational Rules 201.27 and 202.20.

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 eligibility standards.

