

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

IN THE MATTER OF:



Reg No. 200933478  
Issue No. 2009; 4031  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: September 30, 2009  
Calhoun 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 September 30, 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 a material fact:

1. Claimant is a single, 54-year-old female [REDACTED] who completed 10<sup>th</sup> grade; she has an unskilled work history (factor assembly/housekeeping/cleaning), but she has not been employed anywhere since 2003, per self report.
2. On March 16, 2009, claimant filed her most recent of several disability-based MA/SDA applications.
3. When that application was denied claimant filed a timely hearing request, held by conference telephone on September 30, 2009.

4. Claimant stands approximately 5' 4" and weighs approximately 180 pounds; she is right hand dominant, per self report.
5. Claimant has an extensive substance abuse history (cocaine) in combination with a history of violating her past medication pain contract (Department Exhibit 1, pgs. 1, 49, 82, 192, 201 and 209).
6. Medical records collected during one of claimant's prior disability application filings indicate she was participating in rehab in [REDACTED] and she professed to be unable to do the chores assigned due to debilitating back pain (Department Exhibit 1, pg. 82).
7. Claimant's cocaine use has been in full remission since she completed rehab, according to a [REDACTED] hospital admission report (Department Exhibit 1, pg. 258).
8. Claimant was hospitalized overnight in [REDACTED] due to reported chest pain (Department Exhibit 1, pgs. 251-262).
9. The standard battery of cardiac testing (i.e., chest x-rays, blood tests, EKG and stress test) was performed; all results were normal, thus ruling out cardiac disease or acute myocardial infarction (heart attack) (Department Exhibit 1, pgs. 251-262).
10. Claimant alleges she is disabled due to chronic, excruciating, debilitating total body pain secondary to fibromyalgia reportedly diagnosed in [REDACTED], per her hearing testimony.
11. Claimant's current treating doctor has prescribed Lyrica and Ibuprophen 800 for symptom management; water therapy has also been recommended.
12. Claimant's medical records establish she has a history of high blood pressure and high cholesterol, both capable of adequate control on current prescription medications (Department Exhibit 1, pgs. 27, 215 and 262).
13. Likewise, claimant's [REDACTED] lumbar spine x-rays (four months after the disputed MA/SDA application was filed) reveal no severe abnormalities, citing no abnormal motion, no fractures, no dislocations, with only minimal degenerative changes seen at L4-L5 and L5-S1 not uncommon in patients of claimant's age (Department Exhibit 1, pg. 243).
14. Claimant reported she began participating in outpatient [REDACTED] counseling in [REDACTED]; at that time, they prescribed a daily antidepressant (Paxil) which she has been taking as prescribed.

15. On November 17, 2009, the department's State Hearing Review Team (SHRT) doctors continued claimant's MA/SDA disallowance after reviewing all her medical/hospital records submitted through July 2009, stating in relevant part:

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, medium work. In lieu of detailed work history, claimant will be returned to other work.

Therefore, based on the claimant's vocational profile (closely approaching advanced age at almost 54, limited education and a history of unskilled work), MA-P is denied using Vocational Rule 203.18 as a guide. Retroactive MA-P was considered in this case and is also denied.

SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

### **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.

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 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/SDA at Step 1, because she has not been gainfully employed since 2003 (See Finding of Fact #1 above).

At Step 2, claimant's diagnosed physical impairments (minimal degenerative disc disease/sciatica/high blood pressure/high cholesterol), in combination, have left her with some pain on excessive exertion. However, it must be noted no severe mental impairments have been shown, and claimant's existing symptoms appear fully capable of management with the prescription medications currently in use.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding on 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. While this Administrative Law Judge finds claimant's current prescription medications are capable of adequate symptom management in this case, she finds claimant's impairments meet the *de minimus* level of severity and duration required for further analysis.

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, claimant's medical records support a finding she most likely is incapable of returning to her unskilled general labor because those types of jobs require excessive physical exertion (medium exertion) which may exacerbate claimant's pain symptoms and/or cause additional injury. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 54-year-old individual with a limited education and a medium exertional, unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform any number of light work jobs currently existing in the national economy, as that term is defined above. Since this is the standard to be applied in disability determination cases, claimant's disputed application must remain denied in accordance with Medical-Vocational Rule 202.10.

Claimant's biggest barrier to employability appears to be her lack of recent connection to the competitive workforce. Claimant should be referred to Michigan Rehabilitation Services (MRS) for assistance with job training and/or placement consistent with her skills, interests and abilities.

**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 March 16, 2009 MA/SDA application based on a finding she is not disabled under the governing rules.

Accordingly, the department's action is AFFIRMED.

/s/ \_\_\_\_\_  
Marlene B. Magyar  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 22, 2010

Date Mailed: November 22, 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 mailing 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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