

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: 2009-5920

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 19, 2009

Muskegon 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 March 19, 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, 50-year-old high school graduate with a valid driver's license and a roadworthy vehicle who resides with her long term partner (15 years).
- (2) Claimant is independent in all self cares and basic daily living activities but she has given up bowling, softball and lawn care due to knee/leg and low back pain (Department Exhibit #1, pgs 296-298).

(3) Claimant has an unskilled work history, most recently employed as a hy-lo driver but laid-off in 2003 after approximately three years on the job; she has remained unemployed since then (Department Exhibit #1, pg 293).

(4) Claimant stands 5'0" tall and is medically obese at 182 pounds (BMI=35); additionally, she continues to smoke against medical advice, per a December 2006 medical record which recommends weight loss and smoking cessation (Department Exhibit #1, pg 275).

(5) On July 28, 2008, claimant filed a disability-based MA/SDA application.

(6) When the department denied that application claimant filed a timely hearing request to protest the denial.

(7) Claimant's hearing was held on March 19, 2009.

(8) At hearing, claimant stated her right leg has caused difficulty since she was in a motor vehicle accident in June 2004.

(9) At hearing, claimant stated she has had multiple outpatient arthroscopy procedures on her right knee dating back to 2004, and this course of treatment is confirmed by the medical records submitted to date (Department Exhibit #1, pgs 1-302).

(10) Claimant's orthopedic surgeon's records verify his decision to convert claimant's 2006 outpatient, right lateral unicompartmental replacement to a total right knee replacement, with claimant's inpatient surgery scheduled for the end of January 2007 (1/23/07)(Department Exhibit #1, pg 127).

(11) A February 7, 2007 follow-up report from claimant's surgeon notes she was 15 days post-op and doing very well with full extension, 100 degrees flexion, proper alignment, excellent prosthetic knee placement and no instabilities (Department Exhibit #1, pg127).

(12) In September 2007, eight months post right knee replacement, claimant's surgeon noted she had full extension with 140 degrees of flexion and excellent right knee stability; additionally, no malalignments, effusion or signs of infection were present; a six month check-up was planned (Department Exhibit #1, pg 130).

(13) Medical records from claimant's treating doctor dated July 25, 2008 (her MA/SDA application filing month) note claimant was there to discuss persistent knee and lower back pain; the doctor indicated physical therapy had been medically recommended but claimant attended only two sessions due to car trouble (Department Exhibit #1, pg 287).

(14) Two months earlier, on May 15, 2008, claimant underwent a lumbar spine MRI scan which revealed mild disc bulging at L5-S1 and mild foraminal narrowing bilaterally, but no nerve root compromise, stenosis, spondylolisthesis, herniations or intrathecal lesions were identified and all claimant's other lumbar discs were normal, which is consistent with her March 2008 lumbar spine x-ray series (Department Exhibit #1, pgs 290 and 291)(See also consistent EMG testing done 5/22/08, Department Exhibit #1, pg 292).

(15) Claimant stated she occasionally uses a cane for balance and stability; additionally, she was taking [REDACTED] and a newly-prescribed neurological pain management drug (she couldn't recall the name), in addition to [REDACTED] (typically prescribed as a sleep aid) as of her disability hearing date.

(16) Per memo dated January 4, 2008, claimant's orthopedic surgeon stated:

Her knee pain is over the medial tibial plateau and x-rays were taken and I see no evidence of any malalignment or instability or loosening of the prosthesis. Her knee is stable, she has excellent range of motion, there is no swelling, and there is normal tracking of her patella. Unfortunately, I am unable to give the patient or you a good reason for her pain. Presently, she is approximately 1 year since I did a right total knee replacement revision from a lateral

unicompartmental knee replacement. The knee itself seems to be working well.

The prognosis for [claimant] at this point in time is fair in that I think she is going to have continued complaints of ill-defined pain, but as far as the knee prosthesis is concerned, I believe that has been put in properly aligned and very stable and has good fixation so I think that is going to last for several years. Future treatment at this time is symptomatic and her current medications include [REDACTED] and we are going to try and limit that to 50 a month.

[Claimant] is trying to get a job, but keeps getting turned down because of a history of knee replacement surgery (Department Exhibit #1, pg 208).

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.

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 #3 above).

At Step 2, claimant's orthopedic residuals secondary to her 2004 motor vehicle accident have left her with some range of motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's pain levels appear fully capable of adequate management with the current medications being prescribed (See Finding of Fact #16 above).

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. Nevertheless, claimant's medically managed residuals 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, the record reveals claimant was a hi-lo driver until she got laid-off in 2003. At claimant's hearing, no detailed description of her specific job duties or the physical exertional requirements required in those duties was given. Consequently, giving claimant every benefit of doubt, this Administrative Law Judge will proceed to the very last step in the required sequential evaluation process.

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 50 years old with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual function capacity to perform at least light work, as that term is defined above. Therefore, claimant's disputed application must remain denied.

Claimant's biggest barrier to employability appears to be her lack of 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/SDA definitions, because she can return to other light work as directed by Medical-Vocational Grid Rule 202.13.

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/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: March 2, 2010

Date Mailed: March 3, 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.

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