

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: 2010-15062
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 10, 2010
St Clair 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 February 10, 2010. 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 divorced, 53-year-old high school graduate also certified in the medical and dental assistance fields who lives alone in [REDACTED]; she has a valid driver's license and access to a roadworthy vehicle.

(2) Claimant is fully independent in all self cares and basic daily living activities; furthermore, she has had no recent hospitalizations for physical ailments.

(3) Claimant has a semi-skilled work history in medical billing, records scanning and management positions (Department Exhibit #1, pg 219 and 158-163).

(4) Claimant was most recently employed at [REDACTED] but she left that job in 2008 due to poor performance reportedly based on severe pain across multiple body areas (Department Exhibit #1, pg 220B).

(5) Claimant qualified for [REDACTED] until November 2009.

(6) While receiving [REDACTED], specifically on July 16, 2009, claimant filed a disability-based MA/SDA application.

(7) When the department denied that application claimant filed two hearing requests dated November 13, 2009 and December 15, 2009.

(8) Claimant also filed many previous MA/SDA applications dating back to the year her divorce was final (2005), but she did not appeal any of those denials (Department Exhibit #1, pgs 20, 27, 63, 126 and 175).

(9) Claimant's hearing was held on February 10, 2010.

(10) At the hearing, claimant testified she also filed a Social Security disability application in 2008 alleging impairments identical to those she alleges in support of her disputed MA/SDA disability application.

(11) Claimant testified further the Social Security Administration (SSA) denied her application and she did not appeal that denial.

(12) Claimant stands 5'7" tall and is medically obese at 225 pounds (BMI=35.2).

(13) Claimant has been diagnosed with Stage I hypertension not uncommon in medically obese patients and fully capable of adequate control as long as medication compliance is maintained, per a June 2009 medical record submitted by claimant's treating provider (118/84) (Department Exhibit #1, pgs 289-291).

(14) In June 2006, claimant underwent treadmill exercise testing at [REDACTED] in [REDACTED] which verifies she possesses average exercise capacity despite her obesity (Department Exhibit #1, pg 107).

(15) Additionally, claimant's 2008 electrocardiogram (ECG) was basically normal, except for occasional premature ventriculation (palpitations) in sinus rhythm (Department Exhibit #1, pg 302).

(16) Claimant has never been hospitalized for psychiatric or psychological impairments; however, she has a history of mental health outpatient counseling.

(17) Claimant returned to outpatient counseling at [REDACTED] in 2009 after a four year absence (she stopped in 2005 due to lack of insurance, per self report) (Department Exhibit #1, pgs 261-285).

(18) A mental health progress report dated September 24, 2009, indicates claimant was willing to participate in therapy and her prognosis was good as long as she maintained her scheduled appointments (Department Exhibit #1, pg 258).

(19) As of claimant's February 10, 2010 hearing date, her counseling sessions had been reduced to once per week because she was deemed no longer in severe crisis and she was taking [REDACTED] as prescribed by her treating physician for depression, PTSD and panic disorder diagnoses (Department Exhibit #1, pgs 270 and 288B).

(20) Claimant's October 2008 and August 2009 lumbar spine MRI scans verify no disc herniations or stenosis with well-maintained disc spaces and only mild disc bulging/desiccation at multiple levels (Department Exhibit #1, pgs 130, 215 and 234).

(21) Additionally, claimant's 2008 lumbar spine MRI scan confirms her former L3-L4 disc extrusion (2004) was essentially resolved when compared to her former lumbar spine MRI scan (Department Exhibit #1, pgs 130, 215 and 234).

(22) Claimant's surgical history is positive for a 1979 cervical fusion at C4-C6, as confirmed by x-rays taken in 2006, which are otherwise normal (Department Exhibit #1, pgs 95 and 289).

(23) Additionally, claimant's July 2009 bilateral hip and left knee x-rays verify left knee medial meniscus derangement and chondromalacia with arthritis in both hips and bursitis in the left hip; conservative strengthening exercises through physical therapy combined with oral steroids and pain medication was initially prescribed (Medrol/Voltaren)(Department Exhibit #1, pg 237).

(24) As of claimant's hearing date (2/10/10), she testified she was using one [REDACTED] per day and a muscle relaxant [REDACTED] as needed for pain management.

(25) At the hearing, claimant was offered an opportunity to undergo an updated, independent psychological evaluation because she alleged severe emotional impairments.

(26) Claimant acknowledged on the record she wanted to undergo this evaluation and the local office scheduled her appointment on four separate occasions (2/15/10, 3/1/10, 3/10/10 and 3/29/10) but claimant did not appear on any of those dates; consequently, this Administrative Law Judge's decision was confined to the documentary evidence and testimony admitted at hearing.

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).

Jurisdiction must be established for a contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

This policy is also applied in SDA cases, because the MA, SDA and Social Security disability definitions are identical, except for a shorter durational period for SDA (90 days).

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: “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 provides: “If the SSA determination is changed, the new determination is also binding on the department.” 42 CFR 435.541(a)(2)(b)(ii). These federal mandates are reflected in the departmental policy item cited above (BEM Item 260).

Claimant testified credibly at the hearing she received (but did not appeal) a denial from the Social Security Administration (SSA) on her 2008 federal disability application which alleged impairments identical to those she now claims for MA/SDA eligibility purposes. Consequently, under the above-cited federal regulations and state policy, no jurisdiction exists for this Administrative Law Judge to proceed on the merits of this case. Put simply, the status quo must remain intact. The department’s action must remain upheld. However, this Administrative Law Judge notes claimant would not have prevailed on the merits, even if a full analysis was required.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines also are applied in SDA cases. The guidelines state in relevant part:

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).

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).

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 2008 (See Finding of Fact #4 above).

At Step 2, claimant's diagnosed physical and mental impairments, when combined, have left her with some exertional and non-exertional limitations. However, this Administrative Law Judge finds the persistence, intensity and limiting effects claimant endorses are not substantiated by the objective medical evidence presented. Furthermore, it must be noted that, 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. Claimant's physical and psychological symptoms appear fully capable of adequate stabilization and management as long as medication compliance and outpatient therapy is maintained. Nevertheless, claimant's impairments meet the *de minimus* level of severity and duration required for further analysis under *Higgs v Bowen*, 880 F2d 860, 862(6th Cir, 1988). As such, an analysis of Step 3 is required.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed physical or mental impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, this Administrative Law Judge finds claimant's past relevant work history was "sedentary" as that term is defined above. Based on the record as a whole, this Administrative Law Judge finds claimant is physically and mentally capable of returning to any number of sedentary jobs existing in the national economy, including positions similar to the ones she's held in the past. Therefore, claimant is not disabled under the MA/SDA rules, because she can return to past relevant sedentary work, despite her documented impairments.

Claimant's biggest barrier to employability appears to be her lack of any recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED] 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 July 16, 2009 MA/SDA application at the threshold level based on a final SSA denial, or in the alternative, based on claimant's residual functional capacity to return to sedentary work.

Accordingly, the department's denial action is AFFIRMED.

/s/

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

Date Signed: May 11, 2010

Date Mailed: May 12, 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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