

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 20101687
Issue No. 2009/4031
Case No. [REDACTED]
Hearing Date: November 10, 2009
Ottawa 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 November 10, 2009. Claimant and her family members 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 smoker with a valid driver's license and an Associates' Degree in Business Administration (Department Exhibit #1, pgs 16, 19, 27 and 29).
2. Claimant lives with two sons in [REDACTED]
3. On June 16, 2009, claimant applied for disability-based MA (medical coverage) and SDA (a monthly cash grant).
4. When the department denied that application claimant filed a hearing request dated August 17, 2009.
5. Claimant's hearing was held by conference telephone on November 10, 2009.

6. Claimant stands 5'1" tall and weighs 130 pounds; she is right hand dominant, per self report.
7. Claimant's most recent occupation was being a direct care provider in a residential setting (i.e., bathing, dressing, feeding, toileting, passing meds, cooking, cleaning, laundry, etc.) (Department Exhibit #1, pg 29; Department Exhibit #2, pgs 10-12 and 15).
8. Claimant got a weight restriction work slip from her primary care provider (no greater than 15 pounds through March 9, 2009) after she started having aggravated lower back pain secondary to heavy house cleaning at work on February 2, 2009; before that, she reported she was in a normal state of health (Department Exhibit #1, pgs 8, 12, 15 and 19).
9. Claimant left her full-time patient care job in February 2009 and she has remained jobless since then.
10. Claimant's other relevant work includes several years of secretarial experience, which required basic computer, filing, phone and customer service skills at a trucking/snow plowing company (laid-off in 2001)(Department Exhibit #1, pg 29).
11. Claimant underwent a standard, minimally invasive right carpal tunnel release on April 15, 2008, with no adverse residuals, as evidenced by the fact she returned full-time to the physical demands associated with patient care giving until February 2009 (Department Exhibit #2, pgs 1 and 2)(See also Finding of Fact #7 above).
12. Lumbar MRI scans done in March 2008 (pre injury) and March 2009 (post injury) verify only a slight worsening of claimant's Grade I anterior spondylolisthesis at L4-L5 (the least severe of five possible Grades).
13. Additionally, moderate spinal canal stenosis and mild narrowing of both neural foramina at L4-L5 was detected on both MRI scans (Department Exhibit #1, pgs 4-7).
14. Claimant's March 26, 2009 progress report from [REDACTED] states in relevant part:

I have explained to [claimant] that there is little, if any, change in her spondylolisthesis between before and after her injury. I would not be able to justify a change in her spondylolisthesis with her mechanism of injury and lack of pain at the time either. She has alignment issues though which could be related (Department Exhibit #1, pg 18).

15. At that time, claimant exhibited an antalgic gait with a profound limp and decreased stance during the doctor's physical examination; however, when observed walking toward the bathroom from behind claimant was able to heel/toe walk with moderate, hand held assistance (Department Exhibit #1, pg 17).

16. Claimant's June 5, 2009 progress report from [REDACTED] states in relevant part:

My overall impression is that the patient's chronic pain is likely multifactorial in etiology. Because there does not appear to be evidence of an acute radiculopathy, nor any evidence of instability, at this point and time, I would recommend continuing nonsurgical treatment. The patient has an appointment at the pain clinic, which I think is an excellent idea. In the meantime, I have recommended that she continue daily walking and daily lumbar exercises. While the therapy may not cure her of pain, at least it will help her to be more functional in spite of the pain. In regards to the patient's pursuit of disability, I will defer to her other treating physicians, as I do not anticipate her requiring surgery. (Department Exhibit #1, pg 21).

17. Claimant's June 29, 2009 progress report indicates she had a Workers' Compensation suit pending at that time; however, no evidence of the outcome was submitted at claimant's MA/SDA hearing to bolster/support claimant's purported disability status (Department Exhibit #1 pg. 26).

18. No specific examination was done during this meeting but claimant's long-term management plan was discussed at length as follows:

Did explain the fact that narcotic use longterm for chronic back pain is not the best route. She understands this but just doesn't know what else to do. I will switch her to [REDACTED]. I would think that if she has 10 mg dose, 3 of them should be plenty for her. Also have her try [REDACTED]. If that is not covered, we can go with [REDACTED]. Explained to her that [REDACTED] is maxed out. Keep her appointment at pain clinic, see if injections may help. I want to see her back in 2 months, sooner if problems (Department Exhibit #1, pg 26).

19. Claimant stated at hearing she has constant, debilitating, excruciating Level 10 pain daily despite medication compliance which has caused severe depression, sleeplessness, lack of interest in all life activities (anhedonia) and a dramatic decrease in basic daily living activities (i.e., cleaning, cooking, shopping, driving, etc.).

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 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/SDA at Step 1, because she has not been gainfully employed since February 2009 (See Finding of Fact #8 and #9 above). At Step 2, claimant's diagnosed physical impairments (Grade I spondylolisthesis and lumbar disc disease) have left her with some range-of-motion limitations and pain. However, it must be noted no other severe physical impairments are documented by the evidence of record, and no severe mental impairments have been shown. Furthermore, claimant's lower lumbar impairments appear fully capable of adequate management with current prescription medications, in light of the medical evidence presented.

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 physical 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, the record supports claimant's contention she is incapable of returning to direct patient care, as that job requires extensive lifting, walking, bending, twisting, carrying, etc. which could exacerbate claimant's pain level 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 53-year-old individual with an Associates' Degree and a semi-skilled work history (See Finding of Fact #10 above). Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform sedentary or light work, as those terms are defined above. Therefore, claimant's disputed application must remain denied based on Medical-Vocational Rules 201.11 (sedentary work) and/or 202.15 (light work).

Claimant's biggest barriers to employability appear to be her displacement from direct patient care, in combination with her lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities. If claimant is accepted as an [REDACTED] client, she maybe eligible for a monthly cash grant (SDA) on the basis of program participation.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 4, 2011

Date Mailed: August 4, 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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