

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: 2010-27274

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 22, 2010

Chippewa 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 April 22, 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 54-year-old high school graduate who lives alone in [REDACTED]

[REDACTED]

(2) Claimant is fully independent in all self cares and basic living activities; additionally, she possesses a valid driver's license.

(3) Claimant stands 5'3½" tall and weighs 150 pounds; thus, her Body Mass Index is within normal range (BMI=26.2).

(4) Claimant's past relevant work history is with the United States Post Office as a clerk/cashier/supervisor, but she left that job in 2004 and she has remained unemployed since.

(5) Claimant's medical treatment history is positive for a remote, on-the-job injury involving her head and lumbar spine (1990)(Department Exhibit #1, pg 11).

(6) Claimant's July 2008 medical records from [REDACTED] confirm she received a pain injection ([REDACTED]) for an acute exacerbation of low back pain; claimant was discharged in stable condition with prescriptions for continued pain medication ([REDACTED])(Department Exhibit #1, pgs 22 and 23).

(7) Multiple view lumbar spine x-rays taken that day verify disc space narrowing and facet arthropathy at L3-L4, L4-L5 and L5-S1 with mild levo-convex scoliosis at L2-L3, but no disc herniations, fractures or nerve root impingement is seen (Department Exhibit #1, pgs 16 and 18).

(8) As of claimant's disability hearing date (4/22/10), she was taking [REDACTED] once daily for reported pain in multiple areas (e.g., head, neck, wrists, shoulder, back, leg, knees) (Department Exhibit #1, pg 2).

(9) In June 2009, claimant was referred to an endocrinologist because she was experiencing heart palpitations, heat insensitivity, nervousness, fatigue, etc. (Department Exhibit #1, pgs 42-47).

(10) The examining specialist indicated claimant's symptoms were likely secondary to hyperthyroidism; a subsequent thyroid uptake scan verifies minimal irregularity in claimant's thyroid function (Department Exhibit #1, pgs 43 and 46).

(11) Claimant was started on propranol at that time; this medication and a hormone replacement drug () were still being prescribed as of claimant's disability hearing date (Department Exhibit #1, pg 3).

(12) Claimant's sole remaining physical impairment as documented by her August 2009 bone density scan is osteopenia, a milder form of bone loss which does not meet the osteoporosis criteria (Department Exhibit #1, pg 50).

(13) and supplements were medically recommended to maintain good bone health; however, claimant did not mention at the hearing whether or not she was following this recommendation (Department Exhibit #1, pg 50).

(14) Claimant has no history of psychiatric hospitalizations/treatment/counseling; furthermore, no severe cognitive, mental or emotional impairments are evidenced by the medical records she submitted to date (Department Exhibit #1, pgs 1-47).

(15) On September 8, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(16) The department's local office denial claimant's application, as did the department's State Hearing Review Team (SHRT) after their pre-hearing review, which states in relevant part:

The claimant retains the residual functional capacity to perform light/sedentary work. The claimant's past work was sedentary (as he performed it). The claimant retains the capacity to return to past relevant work (Department Exhibit #2).

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Claimant does not qualify for the MA/SDA coverage she seeks because she has not presented any objective medical records to establish the presence of a physical or mental condition, or combination of conditions, which would prevent employability.

Claimant is a 54-year-old high school graduate with sedentary work experience. She is fully independent in all self cares and basic daily living activities. Additionally, her medical records reveal only lower lumbar degenerative changes not uncommon in someone of claimant's age, combined with a mild thyroid irregularity and osteopenia.

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. Claimant's current prescription medication schedule can reasonably be expected to provide adequate symptom control for her diagnosed conditions, as long as medication compliance is maintained. Consequently, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled sedentary or light jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, this Administrative Law Judge concurs with the department's SHRT decision, dated March 30, 2010 (See Finding of Fact #16 above).

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 and properly denied her September 8, 2009 MA/SDA application.

Accordingly, the department's actions are AFFIRMED.

/s/

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

Date Signed: May 24, 2010

Date Mailed: May 25, 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.

MBM/db

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