

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

IN THE MATTER OF:



Reg. No: 201027679

Issue No: 2009/4031

Hearing Date:

April 29, 2010

Kent 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 29, 2010. Claimant and her sister 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 47-year-old high school graduate also certified as a CNA, CMA and phlebotomist (Department Exhibit #1, pg 686).
2. Claimant's past relevant work history (19 years) is in unskilled cleaning of newly constructed homes and existing offices which she claims to have stopped in February 2009; she has remained unemployed since then, per self report (See Finding of Fact #19 and #20 below).
3. Claimant was eligible for MA as the caretaker relative of her minor son until he turned eighteen years old (Department Exhibit #1, pg 671).

4. After claimant's caretaker relative status ended she applied for disability-based MA/SDA on June 18, 2009, in the hopes of maintaining medical coverage (MA) and a monthly cash grant (SDA).
5. The department denied claimant's first application; consequently, she reapplied five months later (Date of Second Application: 11/20/09) (Department Exhibit #1, pgs 8-21).
6. When the department denied claimant's second application, she filed a timely hearing request dated March 10, 2010.
7. Claimant's hearing was held on April 29, 2010.
8. Claimant stands approximately 5'4" tall and weighs approximately 111 pounds; she is left hand dominant, per self report.
9. The department's State Hearing Review Team (SHRT) doctors obtained updated treating records from claimant's family health center dated May 24, 2010.
10. These medical records confirm claimant is a twelve year breast cancer survivor (no recurrence to date) who underwent a double radical mastectomy in 1998 followed by removal of ruptured implants in 2009 [REDACTED] dated May 24, 2010, pgs 1-3).
11. Claimant was evaluated at the [REDACTED] in January 2009; chronic interstitial cystitis was confirmed and an ongoing antibiotic has been prescribed; however, this evaluation remains unremarkable for any other imminently worrisome diagnoses (Department Exhibit #1, pgs 66 and 67)(See also Finding of Fact #15 below).
12. In July 2008, claimant underwent a lumbar spine MRI scan secondary to reported right hip pain; disc degeneration and decreased disc height combined with a right lateral protrusion and bulging were confirmed, but no disc herniations, fractures or significant stenosis was evidenced and claimant's treating doctor has prescribed the standard pain medications and muscle relaxants for symptom management, per her hearing testimony (Department Exhibit #1, pg 56).
13. Likewise, claimant's cervical spine x-rays reveal mild disc space narrowing throughout with no acute abnormalities shown (Department Exhibit #1, pg 62).
14. In December 2008, claimant underwent extensive blood work via [REDACTED], all of which were within normal range or only mildly elevated (Department Exhibit #1, pgs 567-574).

15. In January 2008, claimant underwent a complete abdominal/pelvic CT scan with contrast secondary to intermittent unexplained hematuria (blood in the urine); no abnormalities were seen and no explanation was found for this hematuria, which continues intermittently, per claimant's hearing testimony (Department Exhibit #1, pgs 576 and 577).
16. Claimant also has been diagnosed with high cholesterol and [REDACTED] has been prescribed to regulate her level.
17. Claimant is not engaged in any mental health treatment or counseling and no severe mental/emotional/cognitive impairments are evidenced by the medical records submitted to date.
18. At hearing, claimant endorsed chronic, excruciating, debilitating pain in several areas; however, no objective test results or medical records were submitted to support the duration and intensity of claimant's subjective pain complaints.
19. On March 26, 2010, claimant was examined at [REDACTED] for a [REDACTED] [REDACTED] (Client Exhibit A, pgs 1 and 2).
20. This 2010 assessment states in relevant part:

At this point she cleans houses and has some difficulty with this because of the positions that she must assume while cleaning (Client Exhibit A, pg 1) (See Finding of Fact #2 above).
21. Claimant's rehab plan included minimal physical therapy followed by home exercises, as well as recommendations to apply hot/cold packs to any affected areas.
22. At claimant's disability denial hearing on February 3, 2010, she stated she had been recently diagnosed with non-insulin dependent diabetes and had started taking Avandia for blood sugar control.

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).

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

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 an 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 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).

...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).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

...For example, we consider jobs unskilled if the primary work duties are handling, feeding and off-bearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

...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).

[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).

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 will not be disqualified from receiving MA/SDA at Step 1, because she reports she has not been employed full-time since 2009; however, the record reflects she was physically engaged in at least part-time cleaning as recently as March 2010, despite her representation to the contrary at hearing (See Finding of Fact #2 and #20).

At Step 2, claimant's diagnosed physical impairments, in combination, have left her with some pain symptoms. However, it must be noted no severe mental impairments have been shown, and claimant's pain symptoms appear fully capable of adequate management with current prescription medications (as do her diabetes and high cholesterol), as long as claimant maintains medication compliance.

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. This Administrative Law Judge finds claimant's current prescription medications are sufficient to adequately manage all her diagnosed conditions. Nevertheless, these impairments, when combined, 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's physical impairments may prevent her from maintaining cleaning jobs at the Substantial Gainful Activity (SGA) level. This is because this type of work likely required excessive walking, lifting, bending, climbing, crawling, etc. which might exacerbate claimant's pain levels and/or cause additional injury. As such, an analysis of Step 5 is required.

At Step 5 (the very last step in the required sequential evaluation process), an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual (47) 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 functional capacity to perform at least unskilled, light work as those terms are defined above.

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]) 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 any number of light, unskilled positions currently existing in the national economy, as directed by Medical-Vocational Rule 202.20.

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: September 27, 2010

Date Mailed: September 28, 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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