

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

IN THE MATTER OF:



Reg No. 201041300
Issue No. 2009/4031
Case No. [REDACTED]
Hearing Date: September 14, 2010
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 the claimant's request for a hearing. After due notice, a telephone hearing was held on September 14, 2010. Claimant and her significant other 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, 43-year-old high school graduate who smokes one pack of cigarettes per week, per self report; tobacco cessation has been medically recommended (Department Exhibit #1, pgs 60 and 69-70).
2. Claimant is an insulin dependent diabetic, not uncommon in morbidly obese individuals (5'0" tall/190 pounds: BMI=37.1); diet and exercise have been medically recommended (Department Exhibit #1, pg 59).
3. Claimant has an unskilled work history (direct patient care/cashier/bartending), but she was laid-off in 2008 and she has remained unemployed since then (Department Exhibit #1, pg 68).

4. Claimant currently resides in [REDACTED] with her long-term partner; she does not have a valid driver's license secondary to nonpayment of child support (Department Exhibit #1, pg 76).
5. Claimant's hobbies include camping, fishing, snowmobiling, playing cards, cooking, spending time with her family/friends and riding her Harley Davison motorcycle when she can (Department Exhibit #1, pg 76).
6. On May 4, 2010, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).
7. When claimant's application was denied she filed a hearing request dated June 26, 2010.
8. Claimant's hearing was held by telephone conference on September 14, 2010.
9. Claimant alleged no severe mental/emotional/cognitive impairments at hearing and none are evidenced by the medical records submitted to date (Department Exhibit #1, pgs 1-86).
10. Claimant stipulated on the hearing record she periodically smokes marijuana; the independent psychologist who examined claimant in conjunction with her Social Security disability application diagnosed [REDACTED] in January 2010 (Department Exhibit #1, pg 73).
11. Claimant alleges she is physically disabled due to progressive worsening of upper/lower diabetic neuropathy symptoms.
12. Claimant reports she is in constant, unremitting, debilitating pain (Level 8), despite medication compliance ([REDACTED]) (Department Exhibit #1, pg 80).
13. Claimant's father bought a cane as a gift for reported balance disruptions; claimant stated at hearing she uses this cane periodically, as recommended by her assigned Physician's Assistant (PA).
14. On January 12, 2010, claimant underwent a physical examination in conjunction with her Social Security disability application.
15. This independent physician noted claimant's treating doctor felt she should not have such advanced neuropathy; additionally,

range-of-motion studies done that day were essentially normal, as were claimant's physical abilities, per objective examination (Department Exhibit #1, pgs 79-84).

16. Likewise, claimant's diabetic eye examination dated June 3, 2009, detected no evidence of diabetic retinopathy (Department Exhibit #1, pg 4).
17. Claimant's routine progress report from her treating provider dated January 19, 2009, indicates claimant's diabetes was still uncontrolled (FBS=2.76), and also, states in relevant part:

...Discussed non-compliance again with pt. Unfortunately, not much has changed since her last visit in 2006...still offers a lot of excuses as to why she is not committing to management of her disease. Discussed importance of making better decisions with limited finances and advised her that at this point she is choosing to spend money on cigarettes that will increase health problems and costs vs medications that will improve her condition and allow her to be more productive (Department Exhibit #1, pg 7).

18. At hearing, claimant requested an extension of the record to submit updated progress reports from her treating provider; she was given 30 days to do so.
19. When nothing was submitted, the hearing record closed.

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).

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 she left bartending in 2008 (See Finding of Fact #3 above).

At Step 2, claimant's diagnosed diabetic neuropathy has left her some pain and difficulties in sleep, concentration and activity level. However, it must be noted claimant is still capable of functioning independently in most basic daily living activities despite this condition. 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 fully capable of adequate symptom management in this case, given the objective medical evidence presented. Nevertheless, claimant's diagnosed neuropathy meets 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 impairment is severe enough to meet or equal any specifically listed impairment; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention she cannot return to her past patient care, cashier or bartending work. Given claimant's guarded gait, she is unlikely to be medically cleared to do any of these jobs because they are fast-paced and require excessive standing, walking, lifting, carrying, etc., which could exacerbate claimant's pain and/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 impairment(s). Claimant is a younger individual 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 light work, as that term is defined above. Thus, claimant is not disabled under the MA/SDA definitions because she can return to other light work, as directed by Medical-Vocational Rule 202.20.

Lastly, it must be noted claimant's smoking and obesity are the "individual responsibility" types behaviors considered in *SIAS v Secretary of Health and Human Services*, 861 F2d 475(6th Cir) 1988. In this case, claimant was an obese, heavy smoker who argued that she could not afford the medications prescribed by her doctor. The court stated in relevant part;

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the claimant in this case chooses to drive himself to an early grave, that it is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

The *SIAS* court found claimant not disabled based on his unhealthy habits and lifestyles. Claimant's case parallels the *SIAS* findings, and thus, bolsters this Administrative Law Judge's disability denial.

Claimant's biggest barrier to employability appears to be her lack of 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 determined claimant is not disabled by MA/SDA eligibility standards.

