

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

IN THE MATTER OF:

[REDACTED]

Reg No. 20104180
Issue No. 2009
Case No. [REDACTED]
Hearing Date: March 4, 2010
Clare 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, an in-person hearing was held on March 4, 2010. Claimant, her mother and her [REDACTED] therapist personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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. As of March 2010, claimant was a divorced, 29-year-old female (DOB: [REDACTED]) with a substance abuse history purportedly in early remission due to her residence in a closely monitored adult foster care home secondary to attempted suicide.
2. Claimant has a general equivalency diploma (GED) and an unskilled work history (direct patient care/laundry/factory), but she has not been employed anywhere since 2008, per self report.

3. On May 4, 2009, claimant applied for disability-based MA.
4. Three months later, in August 2009, claimant also applied for federal Social Security disability benefits based on impairments identical to those she alleged during her MA appeal, held in the [REDACTED] [REDACTED] [REDACTED] [REDACTED] on March 4, 2010 (Client Exhibit A, pg 6)(See also Finding of Fact #1 above).
5. Claimant's alleged impairments are: 1) Bipolar Disorder; 2) Post Traumatic Stress Disorder; 3) Hepatitis C; 4) Asthma; 5) Thoracic Outlet Syndrome, as well as generalized depression, social anxiety and loss of feeling in her left arm (Client Exhibit A, pg 2)(Note: claimant is right hand dominant).
6. On February 23, 2010, one month before claimant's MA disability hearing date, she received an Unfavorable Decision from the Social Security Administration (SSA) denying disability status (Client Exhibit A, pgs 2-5)(See also Finding of Fact #4 above).

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).

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.

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA 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 have been incorporated in the department's policy at BEM Item 260.

The documentary evidence in this case verifies claimant received a final SSA disability denial. Claimant alleged identical impairments during her MA hearing, held on March 4, 2010. 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. The status quo must remain intact. Claimant's disputed application must remain denied.

However, before closing this Administrative Law Judge would like to state claimant would be unsuccessful in establishing disability status, even if a substantive review of her case was required. The governing policy states:

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 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.

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).

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).

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).

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).

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).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

Claimant would not be disqualified at Step 1 of the above-referenced sequential evaluation because she has not been gainfully employed since 2008.

At Step 2, the objective medical evidence establishes a combination of diagnosed impairments sufficient in severity and duration to pass the *de minimus* hurdle defined by *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir 1988).

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law; consequently, an analysis of her ability to engage in her past relevant work would be required.

At Step 4, claimant has shown her combined impairments could reasonably be expected to prevent her from returning to her past, medium exertional level, unskilled work. Consequently, an analysis of Step 5 would be required.

At Step 5, an applicant's age, education, work experience and residual functional capacity are assessed in relation to the documented impairments. Claimant is a young individual with a high school education and an unskilled work history in medium exertional level jobs. After a careful review of the medical evidence presented, this Administrative Law Judge found it to be insufficient in establishing claimant's combined impairments would prevent her from engaging other work; specifically, light unskilled work as that term is defined above. Therefore, claimant's disputed MA application would remain denied based on the residual functional capacity to perform light work pursuant to Medical-Vocational Rule 202.20, as specified on post-hearing decision issued by the department's State Hearing Review Team (SHRT) on March 10, 2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department's denial of claimant's May 4, 2009 MA application was correct.

Accordingly, the department's action is hereby AFFIRMED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 31, 2011

Date Mailed: March 31, 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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