

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. 201049575
Issue No. 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: November 23, 2010
Wayne 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 23, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by 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 a material fact:

1. Claimant is a 47-year-old high school graduate who lives alone in a house owned by her husband; the couple has been informally separated for approximately 16 years, per claimant's hearing testimony.
2. Claimant has an unskilled, sedentary work history in clerical/accounting positions but she has remained unemployed since 2005 (Department Exhibit 1, pg. 13).

3. On June 3, 2010, claimant applied for a disability-based monthly cash grant (SDA); she did not request medical coverage (MA/retro-MA) on that application.
4. When the department denied claimant's application she filed a hearing request, held by telephone conference on November 23, 2010.
5. Claimant stands approximately 5' 0" tall and weighs approximately 125 pounds; she is right hand dominant, per her hearing testimony.
6. In 2005, claimant was diagnosed with lupus and fibromyalgia (Department Exhibit 1, pg. 4).
7. Claimant experiences multiple symptoms secondary to these conditions and to the medication side-effects including chronic pain, insomnia, depression, sun sensitivity, visual disturbances, loss of appetite, confusion, memory loss and general. ongoing fatigue.
8. Claimant's prescription medications (Plaquenil/Metro Prednisone/ Cymbalta) do little to effectively relieve or manage her symptoms; however, she reports a modest improvement in depression since starting Cymbalta approximately two months ago.
9. Claimant's treating rheumatologist provided the following diagnosis under cover letter dated [REDACTED]

The presence of history of positive ANA, lupus panniculitis, alopecia, photosensitivity and joint pain is in favor of the diagnosis of systemic lupus erythematosus . . . (Client Exhibit A).
10. This rheumatologist also noted claimant exhibits symptoms consistent with ongoing depression and "fibromyalgia syndrome" (Client Exhibit A).
11. Additionally, claimant's ongoing, outpatient mental health provider [REDACTED] provided the following diagnoses under cover dated [REDACTED] 1) Major Depressive Disorder (Moderate/Recurrent) and 2) Post Traumatic Stress Disorder (Client Exhibit B).
12. Claimant's treatment plan includes continuing psychotherapy with medication management via Cymbalta (Client Exhibit B) (See also Finding of Fact #8 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).

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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

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).

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).

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 SDA at Step 1, because she has not been employed since 2005 (See Finding of Fact #2 above). Therefore, she meets the threshold requirement necessary to continue the sequential evaluation process in determining SDA eligibility.

At Step 2, claimant also meets the 90 day durational criterion necessary for SDA to attach. As such, this analysis must continue.

At Step 3, claimant's impairments, standing alone or combined, do not meet any of the specifically listed impairments granted automatic disability status under the law; consequently the analysis must continue.

At Step 4, the objective medical evidence supports claimant's testimony at hearing regarding the intensity, chronicity and multiplicity of exertional and non-exertional symptoms she experiences on a daily basis. Therefore, unless and/or until this condition improves, it is unlikely she is able to return to her past work. Therefore, Step 5 must be considered.

Step 5 does not look at what an applicant cannot do, but rather, focuses on what he or she may be able to do, despite their medical condition. This is called an applicant's "residual functional capacity." Residual functional capacity is viewed in light of the applicant's age, education, work history and objective medical evidence.

Claimant's medical conditions are well-documented. Additionally, her testimony regarding ongoing symptoms is consistent with these diagnoses. Therefore, great weight and credibility must be given to her testimony in this regard. As such, this Administrative Law Judge finds claimant, despite being a younger individual with a high school diploma and a sedentary work history, is incapable of performing that type of work on a consistent and sustained basis.

If an applicant cannot perform even sedentary work, he or she is automatically deemed incapable of performing higher exertional level jobs (light/medium/heavy) under the governing rules. Therefore, this Administrative Law Judge finds the department's decision to deny claimant's June 3, 2010 SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not disabled by SDA eligibility standards in conjunction with her June 3, 2010 SDA application.

Accordingly, the department's decision is REVERSED and it is Ordered:

1. This case be returned to the local office for application reinstatement and processing consistent with departmental policy.
2. Claimant shall undergo a mandatory medical review of her condition in February 2011, to determine her level of improvement at that time for continued SDA eligibility purposes.

3. The local office shall schedule claimant for independent physical and mental examinations at review, in addition to collecting all updated medical records from her treating providers at that time.
4. The department shall advise claimant to file a Medicaid (MA) application at review, if she has not already done so.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 2, 2010

Date Mailed: December 2, 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 mailing 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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