

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: 2010-9521

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 13, 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 claimant's request for a hearing. After due notice, a telephone hearing was held on January 13, 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 divorced, nicotine-dependent, 53-year-old female with a general equivalency diploma (GED) who lives independently in [REDACTED].

(2) Claimant has a valid driver's license but no vehicle; consequently, she uses public transportation, walks or gets rides from her brother to accomplish necessary basic daily living activities like shopping, doctor's appointments, etc.

(3) Claimant has an unskilled work history which consists of 19 years as a greenhouse worker, as well as waitressing, cooking and general housekeeping, but she left her most recent job in February 2009 because she got fired (Department Exhibit #1, pgs 9 and 17).

(4) On June 4, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) because she was unemployed.

(5) When that application was denied claimant filed a timely hearing request dated October 20, 2009.

(6) Claimant's hearing was held on January 13, 2010.

(7) Claimant stands approximately 5'4" tall and weighs approximately 156 pounds; she is right hand dominant.

(8) Claimant's history is positive for alcohol abuse and illicit drug use ([REDACTED]) (Department Exhibit #1, pg 15).

(9) Patient notes from a doctor's visit claimant attended on March 9, 2009 due to back pain stemming from a furniture moving activity indicate she still used alcohol and [REDACTED] "occasionally" (Department Exhibit #1, pg 63).

(10) Claimant was diagnosed with sciatica and the standard pain medications were prescribed ([REDACTED]) without refills, in addition to the doctor's suggestions for heat/ice therapy, general stretching and massage, as needed for symptom management (Department Exhibit #1, pg 64).

(11) Claimant has never been psychiatrically hospitalized but she has been told in the past she has a Bipolar Mood Disorder (Department Exhibit #1,pg 15).

(12) A [REDACTED] initial assessment dated October 27, 2007, indicates claimant was reinitiating treatment because she needed to “get her meds stabilized” (Department Exhibit #1, pg 15).

(13) Claimant currently takes [REDACTED] for mood stabilization, and thus, she consistently attends periodic medication reviews (every couple months) at [REDACTED] which are necessary for her prescription renewals.

(14) Claimant’s [REDACTED] progress report from July 2009 (one month after she filed her disputed disability application) was essentially normal, citing minimal stress and a Global Assessment Function (GAF) score of 60 (Department Exhibit #1,pg 33).

(15) Likewise, claimant’s September 9, 2009 Family Practice medical records note she was there with left knee pain complaints because she ran to catch a bus the previous weekend but missed it, so she ended up walking five miles home (Department Exhibit #1, pg 41).

(16) Claimant’s Family Practice facility also reported her Bipolar Mood Disorder was stable on the medications [REDACTED] was prescribing (Department Exhibit #1, pg 41).

(17) Claimant’s Family Practice facility currently has her blood pressure under good control with [REDACTED] and also, she takes a prescription sleep aid and uses a prescription inhaler for shortness-of-breath symptoms not uncommon in patients with an extensive tobacco abuse history (40 years).

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.

...[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.

...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).

...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).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(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).

...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).

...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).

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 filed her disputed application on June 4, 2009.

At Step 2, the applicable case law requires a *de minimus* standard of review.

Consequently, ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity and duration have been met. As such, the analysis will continue.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed physical and mental impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, nothing on this record supports claimant's contention that she is physically or mentally incapable of returning to any of the unskilled jobs she held in the past, if such positions were offered today (See Finding of Fact #3 above).

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 medically managed physical and mental impairments

appear fully capable of good control with the current prescription medications, as long as compliance is maintained. Therefore, this analysis could end at Step 4 with a finding of not disabled based on claimant's ability to return to past work. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 53-year-old female with a GED 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, and perhaps even unskilled medium work, as those terms are defined above. As such, claimant is not disabled under the applicable MA/SDA rules, because she can return to any number of unskilled light and/or medium exertional level jobs currently existing in the national economy, as directed by Medical-Vocational Grid Rules 202.13 and 203.21.

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: February 9, 2010

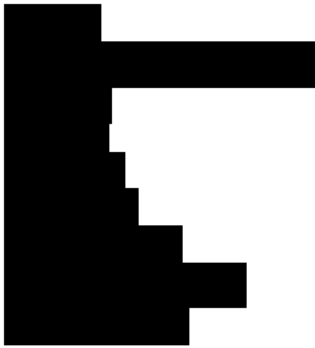
Date Mailed: February 9, 2010

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

cc:

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