

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

IN THE MATTER OF:



Reg. No.: 2010-13956
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 25, 2010
DHS County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on February 25, 2010. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On June 17, 2009, Claimant applied for MA-P and SDA.
2. On October 29, 2009, the Medical Review Team denied Claimant's request.
3. On November 30, 2009, Claimant submitted to the Department a request for hearing.
4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 49 years old.
6. Claimant completed education through the 11th grade.
7. Claimant has employment experience as a cook.

8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from myocardial infarction, grand mal seizures, rheumatoid arthritis and had a full hip replacement in [REDACTED].
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The SDA program, which provides financial assistance for disabled person, is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and PRM.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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.

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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Claimant's treating physician noted the following: Claimant's condition was deteriorating and limited her to lifting less than 10 lbs occasionally and noted no repetitive use of her feet/legs for the operation of leg and foot controls. He noted Claimant has mental limitations in her ability to concentrate and her memory. He also indicated that Claimant suffered from grand mal seizures, depression and anxiety.

Claimant testified to the following: seizures once a week since [REDACTED], prior to [REDACTED] once a month, blackouts, loss of bladder control, some memory problems, been to emergency room 3 times for seizures in the last 7 months, pain in hands and feet, knees have had fluid drained twice ([REDACTED]), fluid build up on both knees, can stand for about 2 minutes, can sit for 30 minutes, can lift up to a gallon of milk using both hands, weakness in grip, struggles to lift legs to put pants on, struggles with pulling shirt over head, can't brush hair, can do a limited amount of

cooking, needs help with laundry, needs help with grocery shopping, some vision problems, poor sleep, gets at most an hour or two a night and struggles with concentration.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 11.02 or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

Therefore, Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as June 2009.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated June 17, 17, 2009, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for January 2012.



Jonathan W. Owens
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: January 12, 2011

Date Mailed: January 12, 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.

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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.

JWO/pf

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