

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: 2010-15146

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 10, 2010

Genesee 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 February 10, 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 single, 43-year-old smoker (1/2 pack per day) with a high school education and a polysubstance abuse history ([REDACTED]) in sustained remission, per self report (Department Exhibit #6, pgs 1 and 2).

(2) Claimant stands approximately 5'6" tall and weighs approximately 117 pounds; she is left hand dominant, per self report (Department Exhibit #6, pg 2).

(3) Claimant has a simple, unskilled work history (newspaper and box assembly jobs and mall janitorial services), but she left her most recent Christmas season janitor's position at a local mall in January 2009 when that position ended; she has remained unemployed since then (Department Exhibit #6, pg 5).

(4) On September 11, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) because she has no income or medical insurance.

(5) When that application was denied, claimant filed a hearing request to dispute the denial; her hearing was held on February 10, 2010, five months after her disputed MA/SDA application was filed.

(6) As of that hearing date, claimant reported her only prescription medication was [REDACTED] for pain associated with poor dentition ("bad teeth").

(7) Claimant has no driver's license, and thus, she relies on public transportation (bus) as needed to complete her errands, attend her scheduled appointments, etc. (Department Exhibit #6, pg 5).

(8) Otherwise, claimant is fully independent in all self cares and basic daily living activities (Department Exhibit #6, pg 8).

(9) Claimant has a right upper extremity deformity caused by severe burns at an early age (Department Exhibit #6, pg 5).

(10) Claimant also currently attends once weekly outpatient counseling sessions at [REDACTED]

(11) A Mental Residual Functional Capacity Assessment (DHS-49E) completed by [REDACTED] two months after claimant's disputed MA/SDA application was filed rates her as not significantly limited or moderately limited in the four areas of mental functioning required to be assessed during the disability determination process (Department Exhibit #5, pgs 1 and 2).

(12) In July 2009, while claimant was still admittedly engaged in ongoing alcohol abuse, she underwent an independent psychological examination which lists alcohol dependency as a reason she would be likely to have episodes of increased absenteeism from work (Department Exhibit #6, pg 4).

(13) Claimant's only other diagnosis was Major Depressive Disorder (single episode, mild)(Department Exhibit #6, pg 4).

(14) In July 2009, claimant also underwent an independent physical examination to assess the severity of her left upper extremity residuals secondary to the severe childhood burns with her last skin grafting completed at age 12 (Department Exhibit #6, pgs 5-12).

(15) Claimant was described as extremely agile except for her upper right extremity, with a 3 to 4 inch length differential from elbow to fingertips, as well as an inability to make a full fist and underdeveloped right forearm muscles (Department Exhibit #6, pg 6).

(16) Claimant's clinical examination in all other orthopedic/neurologic areas was essentially normal, which led the consulting physician to conclude as follows:

Right wrist is fixed in extension. She is independent in her self cares and activities of daily living. She does not drive having no license. Based on this examination I feel that [claimant] should be able to perform her usual and customary activities without any restrictions. She can also be in gainful employment. In fact she was working as a janitor in the mall (Department Exhibit #6, pgs 8-12).

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.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...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).

...[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 [SDA duration = 90 days].

...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).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a "medically determinable physical or mental impairment," an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Additionally, 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 pain and/or other symptoms can be managed to the point where substantial gainful employment can

be achieved, a finding of not disabled must be rendered. Claimant's current prescription pain reliever appears fully capable of adequate symptom control for her poor dentition. Likewise, claimant's permanent right upper extremity residuals do not appear to have prevented her from engaging in a wide variety of unskilled jobs during her adulthood, the last which was a janitorial position which ended when the Christmas season ended.

As such, claimant does not qualify for the MA/SDA coverage she seeks because she has not presented any objective medical records to establish the presence of a physical or mental condition, or combination of conditions, which would prevent employability. Consequently, claimant's September 11, 2009 MA/SDA application must remain denied based on lack of severity shown.

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 decision is AFFIRMED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 9, 2010

Date Mailed: March 10, 2010

heading

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

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