

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: 2010-16522

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 3, 2010

Roscommon 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, an in-person hearing was held on March 3, 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 47-year-old female with a limited education (9th grade only) who has lived alone in her grandmother's house since her fiancé's (and her former spouse's) death on October 3, 2007.

(2) Claimant and her fiancé/former spouse lived together prior to his death; additionally, claimant acted as his caretaker during his last illness, which included bathing/dressing him, taking him to his medical treatments/appointments and maintaining their household (e.g., cooking, cleaning, shopping, etc).

(3) On October 4, 2007, claimant filed an application for disability-based medical insurance (MA) and a monthly cash grant (SDA) for herself because she had been out of the competitive workforce since 2006; claimant's past relevant work experience includes unskilled restaurant jobs (e.g., waitress, bartender).

(4) Claimant also owned her own cleaning business at one time, but lost that when she became addicted to cocaine (Department Exhibit #1, pg 21).

(5) When the department denied claimant's October 4, 2007 disability application she requested a hearing; however, claimant's hearing request was not timely processed, and thus, the hearing was not actually held until March 3, 2010.

(6) Claimant stands 5'10" tall and is slightly underweight at 118 pounds (BMI=16.9).

(7) Claimant has a history of polysubstance abuse and she voluntarily involved herself in substance abuse treatment in the remote past (Department Exhibit #1, pg 21).

(8) In December 2007 (two months after claimant's disputed application was filed), she drank an excessive amount of alcohol coupled with [REDACTED], which led to an Emergency Room (ER) visit followed by brief involvement in voluntary outpatient counseling at [REDACTED] [REDACTED] to assist her with overwhelming grief due to the loss of her loved one (See also Finding of Fact #1 and #2 above).

(9) As of claimant's hearing date, she was no longer involved in any type of mental health counseling or treatment; however, her treating doctor was continuing to prescribe [REDACTED] for self-reported anxiety.

(10) Claimant has a 30+ history of tobacco abuse (2 packs per day) which has resulted in Chronic Obstructive Pulmonary Disease (COPD)(Department Exhibit #1, pgs 16 and 240).

(11) Claimant's treating doctor has prescribed standard inhalers and a nebulizer three times daily for symptom management.

(12) In November 2002, claimant underwent open reduction/internal fixation (ORIF) of her right hip to repair an intertrochanteric hip fracture; she reports chronic, debilitating pain since then and she continues to take narcotic pain medication daily ([REDACTED] Department Exhibit #1, pgs 34-43).

(13) Updated hip and pelvic x-rays (9/5/07) revealed a normal hip joint without degenerative changes and without traumatic or intrinsic abnormalities; however, rotation of claimant's pelvis to the left was noted (Department Exhibit #1, pg 188).

(14) Claimant filed a Social Security disability application alleging essentially the same impairments she now alleges in this cause of action.

(15) Approximately five months after claimant filed her disputed MA/SDA application, specifically on March 27, 2008, the Social Security Administration (SSA) issued a disability disallowance which states in relevant part:

...We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work...

...The medical information shows that you have received treatment to help control your condition. Although you might experience discomfort at times, you are still able to move about and use your arms and legs in a satisfactory manner. When we apply the Social Security Rules to the medical evidence regarding your condition, we find that you retain the ability to perform any light work that is not complicated and able to be learned in a short period of time... (Department Exhibit #1, pg 10).

(16) That same month (3/08), claimant underwent an independent physical examination to assess potential MA/SDA eligibility in conjunction with her disputed application.

(17) Claimant was described as a well-developed asthenic female in no apparent distress who exhibited normal social, cognitive and mental traits (Department Exhibit #1, pg 239).

(18) Claimant's blood pressure was excellent at 118/78 and her bilateral grip strength/tone/manual dexterity was unimpaired (Department Exhibit #1, pg 239).

(19) Claimant's right hip demonstrated a 25% reduction in straight leg raising and she was noted to walk with a mild right-sided limp; otherwise, no additional severe abnormalities were observed (Department Exhibit #1, pgs 238 and 239).

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).

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.

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).

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).

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).

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).

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 MA/SDA at Step 1 because she has not been gainfully employed in several years.

At Step 2, the residuals from claimant's remote right hip surgery, in combination with her COPD, have left her with some range of motion limitations, shortness of breath and pain symptoms. However, it must be noted no severe mental impairments have been shown, and all claimant's diagnosed conditions appear capable of adequate symptom management with the medications currently being prescribed, as long as compliance is maintained.

Furthermore, 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. Nevertheless, claimant's medically managed physical impairments meet the *de minimus* level of severity and duration required for further analysis.

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

At Step 4, the medical evidence supports claimant's contention she is not capable of returning to her old restaurant jobs because those medium to heavy exertional activities (standing, walking, lifting, carrying, bending, etc.) may cause additional injury or an exacerbation of her existing symptoms. As such, this analysis must continue.

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 younger individual with a limited education 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 sedentary or light work on a sustained basis, as those terms are defined above. This finding is consistent with the Social Security Administration's (SSA's) disability disallowance issued on March 27, 2008, which is currently on appeal.

Claimant's biggest barrier to employability appears to be her lack of any recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities. Put simply, claimant is not disabled under the MA/SDA definitions because she can return to other light or sedentary work, as directed by Medical-Vocational Grid Rules 201.18 and 202.17.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant was not disabled by MA/SDA eligibility standards at any time relevant to her disputed, October 4, 2007 application.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: March 11, 2010

Date Mailed: March 12, 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:

[REDACTED]