

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: 2010-17385

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 23, 2010

Ionia 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 March 23, 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 59-year-old, tobacco-dependent female (10 packs per week) with a general equivalency diploma (GED) who does not have any history of mental health or substance abuse hospitalizations, treatment or counseling.

(2) Claimant's past relevant work history includes sedentary and light exertional activities in secretarial and cashier positions (Department Exhibit #1, pgs 4 and 17).

(3) Claimant left her most recent grocery store cashier's job in March 2009 after approximately one year because she and her long-term partner returned to [REDACTED] from [REDACTED], where they lived for more than six years.

(4) As of claimant's March 23, 2010 disability hearing date she was employed as a child care provider for three children (7, 10 and 12 years of age), but she planned to quit that job at the end of March 2010.

(5) Claimant stands approximately 5'2" tall and weighs approximately 162 pounds; she is right hand dominant and has a driver's license, per self report.

(6) On September 16, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(7) Claimant's past medical history is positive for right carotid stenosis resolved in 2002 by endarterectomy without any evidence of further complications (Department Exhibit #1, pg 73).

(8) In August 2009, (one month prior to application filing), claimant was briefly hospitalized for cardiac testing (Department Exhibit #1, pg 7).

(9) Throughout claimant's hospital stay her vital signs were normal and the standard battery of cardiac testing failed to reveal any severe abnormalities, thus leading doctors to conclude claimant's reported chest pain was not cardiac in nature (Department Exhibit #1, pgs 32-34, 75-77, 83-84 and 91-94).

(10) In July 2009 (two months prior to application filing), claimant underwent cervical and lumbar spine MRI scans (Department Exhibit #1, pgs 36-38).

(11) Claimant's lumbar spine MRI scan revealed no evidence of disc herniation, spinal stenosis, or nerve root compromise; however, mild central disc bulges were seen at L4-5 with typical degenerative changes (osteoarthritis) documented throughout the lumbar spine not uncommon for someone of claimant's age (Department Exhibit #1, pgs 36 and 37).

(12) Claimant's cervical spine MRI scan also revealed moderate spondyloarthropy and mild narrowing at multiple levels (i. e., C3-4, C4-5 and C5-6)(Department Exhibit #1, pg 38).

(13) As of claimant's disability hearing date, her treating doctor was prescribing [REDACTED] for pain management (Department Exhibit #1, pg 17).

(14) Although claimant's medical records document a history of high blood pressure and high cholesterol, she did not list any ongoing medications for either of these conditions at her disability hearing; however, she did indicate she was taking [REDACTED] [REDACTED] as prescribed.

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.

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).

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).

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 reported at the disability hearing she was employed as a child care provider but she was planning to quit that job at the end of March 2010. Because this Administrative Law Judge has no evidence about claimant's monthly earned income from that job, she will not consider it to be substantial gainful work activity as defined by the governing regulations. Claimant's cashier job ended in March 2009 (See Finding of Fact #3 above). For purposes of this analysis, that job will be considered her last substantial gainful employment. As such, this analysis must continue.

At Step 2, claimant's diagnosed physical impairments, in combination, have left her with some range of motion limitations and arthritis pain. However, it must be noted no severe mental impairments have been shown, and claimant's degenerative arthritis appears fully capable of adequate pain management with the medications currently being prescribed, as long as medication compliance is maintained. Furthermore, it must be noted the laws 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 cervical (arthritis) 2nd lumbar degeneration meets 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 documented 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 record reveals claimant's relevant work history includes sedentary work, performing receptionist/telephone/filing duties in an office setting. After a complete and objective review of the medical test results and treatment records submitted to date, this Administrative Law Judge concurs with the department's State Hearing Review Team (SHRT) decision dated February 12, 2010, which states claimant retains the residual functional capacity to perform these types of sedentary job duties despite her diagnosed conditions (See Department Exhibit #2). As such, claimant's disputed disability application must remain denied at Step 4 of the required sequential evaluation based on her capacity to perform past work.

Claimant's biggest barrier to employability appears to be her displacement from the competitive workforce in Michigan, having been out of this state for several years before her return in March 2009. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities.

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: April 29, 2010

Date Mailed: April 30, 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.

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