

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: 2010-24638  
Issue No: 2009/4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 13, 2010  
Gratiot 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 April 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 married, 57-year-old nonsmoker/nondrinker with a limited education (completed 10<sup>th</sup> grade).

(2) Claimant has an extensive work history which includes self-employment in marketing Western clothing and horse products at various fairs and shows (Client Exhibit A, pg 1).

(3) Most recently, claimant worked in telemarketing and shipping/receiving for a publishing company, but she left that job in July 2009 and she has remained unemployed since.

(4) On September 29, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(5) When the department denied claimant's application she filed a hearing request; the hearing was held by conference telephone on April 13, 2010.

(6) Claimant alleges she is completely unable to engage in any type of substantial gainful work activity due to recurrent migraine headaches and multiple aches and pains in her neck, hips, back, shoulder, knees and hands.

(7) Claimant alleges she has rheumatoid arthritis, however, none of the medical records or multiple blood test results contained within claimant's file support this diagnosis; in fact, claimant's August 2008 blood work actually verifies a sed rate within normal limits (Department Exhibit #1, pg 112).

(8) Claimant stands 5'0" tall and is medically obese at 170 pounds (BMI=33.2); she is right hand dominant, per self report.

(9) Claimant's medical records confirm the existence of osteoarthritis in multiple joints as well as osteoporosis, per a 2008 bone density scan, not uncommon in patients of claimant's age and effectively managed with current prescription medications

( [REDACTED] samples (Department Exhibit #1, pg 13 and 128-133).

(10) Claimant's July 2009 thoracic spine MRI scan is noted as stable when compared to her January 2008 study, with degenerative disc disease (osteoarthritis) at multiple levels, but no acute fractures, subluxations or herniations were seen (Department Exhibit #1, pg 127).

(11) September 2009 nerve conduction studies of claimant's lower extremities were completely normal, as was right lower extremity venous Doppler testing done in April 2008 (Client Exhibit A, pgs 8-12; Department Exhibit #1, pg 136).

(12) Claimant's medical history is positive for left knee replacement surgery in 2004 and right knee replacement surgery in 2007, after which, claimant eventually returned to full work activity without restrictions related to her knees (Client Exhibit A, pg 2)(See also Finding of Fact #3 above).

(13) In August 2009, claimant underwent multiple view, left foot x-rays secondary to great toe pain following a bunionectomy; these x-rays were normal except for expected evidence of post-surgical change (Department Exhibit #1, pgs 126).

(14) Claimant's medical records evidence intermittent migraine headache symptoms dating back to 1998, for which [REDACTED] and [REDACTED] have been prescribed (Department Exhibit #1, pg 75).

(15) In June 2007, claimant's chest pain complaints led to echocardiography and 24 hour Holter monitoring (Department Exhibit #1, pgs 147 and 148).

(16) These test results were within normal range with excellent left ventricular ejection fraction at 65%; however, there was a "short run" of sinus tachycardia evidenced on claimant's Holter monitor scan (Department Exhibit #1, pg 148).

(17) During claimant's August 2007 routine yearly physical examination, she acknowledged she no longer experienced fluttering of her heart after [REDACTED] was started, and

she reported she was still taking that medication as of her hearing date (Department Exhibit #1, pg 29).

(18) Claimant's 2007 lumbar spine MRI scan reveals a significant bulge at L4-L5 with possible nerve root impingement, as well as mild to moderate disc bulging at L3-L4 and L5-S1 and some disc space narrowing at that level, as well (Client Exhibit A, pg 5; Department Exhibit #1, pg 137).

(19) Two years later, in September 2009, lumbar spine range-of-motion testing conducted by an independent medical examiner verified moderate lumbar spine restrictions; however, claimant's ambulatory gait was normal despite having difficulty with heel-toe walking due to the past bunion surgery (Client Exhibit A, pg 4)(See also Finding of Fact #13 above).

#### 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).

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 since July 2009 (See Finding of Fact #3 above).

At Step 2, claimant's documented physical impairments, in combination, have left her with some range-of-motion limitations and pain. However, it must be noted no severe mental impairments have been shown and all claimant's physical impairments appear capable of adequate management with current prescribed medications, as long as compliance is maintained. In short, this Administrative Law Judge finds claimant's complaints of constant, severe, debilitating pain across multiple body systems to be inconsistent with the medical tests results submitted to date, and likely exaggerated for secondary gain (a favorable disability ruling).

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of disability can be rendered. In fact, 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 record reveals claimant's past relevant employment consists of a variety of exertional levels, including sedentary work (telemarketing), as that term is defined above. This Administrative Law Judge finds claimant has not established, by objective medical evidence, that she cannot perform any number of sedentary jobs currently existing in the national economy, including telemarketing. As such, this analysis must end at Step 4, based on claimant's residual functional capacity to return to sedentary work.

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, and also, the department properly denied claimant's September 29, 2009 MA/SDA application.

Accordingly, the department's actions are AFFIRMED.

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

Date Signed: May 20, 2010

Date Mailed: May 21, 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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