

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

IN THE MATTER OF:

[REDACTED]

Reg No. 20102766
Issue No. 2009/4031
Case No. [REDACTED]
Hearing Date: November 19, 2009
Kent 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on November 19, 2009. Claimant personally appeared and testified. She was assisted by her health care/patient advocate.

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, 51-year-old tobacco abuser (3 packs per week) with non-insulin dependent diabetes who is medically obese at 5'5" tall and 240 pounds (BMI=39.9); she is right hand dominant.
2. Claimant has a high school education, a valid driver's license and a roadworthy vehicle; she currently resides with her unemployed husband in [REDACTED]
3. Claimant has an unskilled work history (machine operator/cashier/laundromat attendant), but she left her most recent job in May 2008 and she has remained unemployed since then (Department Exhibit #1, pg 58).

4. On July 28, 2009, claimant applied for disability-based MA/SDA.
5. When that application was denied claimant filed a hearing request dated October 5, 2009.
6. Claimant's hearing was held on November 19, 2009.
7. Claimant was briefly hospitalized in July 2009 (7/16/09-7/19/09) secondary to a bout of viral pneumonia; smoking cessation was recommended, as were weight loss, diet and exercise (Department Exhibit #1, pgs 27-46).
8. Claimant was discharged in stable condition and she started taking potassium chloride due to hospital bloodwork which showed a low potassium level (Department Exhibit #1, pgs 28 and 30).
9. Claimant's current prescription drug schedule includes high blood pressure and high cholesterol medications, not uncommon in medically obese patients.
10. When claimant was admitted to the hospital through the Emergency Department (ED) on July 16, 2009, she stated she had no leg pain or swelling, she was trying to exercise, she could walk approximately one-quarter of a mile without difficulty, and she was doing well except for her current symptoms (Department Exhibit #1, pg 41).
11. Six months earlier, claimant sought treatment for reportedly persistent bilateral foot swelling, tingling and burning pain (Department Exhibit #1, pgs 12-13).
12. No severe abnormalities were noted on physical examination; likewise, the EMG testing conducted on January 14, 2009 was essentially normal, but for some mild, chronic neuropathic changes in claimant's left extensor digitorum brevis "which could be a normal variant" (Department Exhibit #1, pgs 8-9 and 13).
13. Claimant reported tolerable daytime pain at 3/10 with [REDACTED] control (Department Exhibit #1, pg 12)(See also Finding of Fact #10 above).
14. As of claimant's November 19, 2009 hearing date, her prescription pain medications were [REDACTED] and [REDACTED].
15. As of that date, claimant's health care advocate stated she had been meeting with claimant approximately four times per month.

16. Claimant's medical records reveal a remote admission to [REDACTED] for treatment of clinical depression ([REDACTED]), with no intervening episodes since then; additionally, as of claimant's hearing date, no psychotropic medications were being 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).

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.

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.

...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).

...[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.

...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 record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

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).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...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).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

Furthermore, 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 is not disqualified from receiving MA/SDA at Step 1 because she is not currently employed and she has not been substantially gainfully employed since 2008.

At Step 2, claimant's reports of chronic, excruciating lower foot/leg pain are inconsistent with the medical records presented. Furthermore, the pain management drugs currently being prescribed appear fully capable of adequate pain management, just as the remainder of her medication schedule appears adequate for her diagnosed high blood pressure and high cholesterol. Lastly, no

severe mental impairments have been shown. Nevertheless, giving claimant every benefit of doubt, this Administrative Law Judge finds claimant's medically managed conditions, when combined, 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 supports claimant's contention she is incapable of returning to her former unskilled, medium exertional jobs because those positions required prolonged standing with extensive bending, heavy lifting, carrying, etc. which might exacerbate claimant's 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 51-year-old high school graduate with 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 light work in accordance with Medical-Vocational Rule 202.13. As such, her disputed application must remain denied,

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 denial of claimant's July 28, 2009 MA/SDA application is AFFIRMED.

/S/

Marlene B. Magyar
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 16, 2011

Date Mailed: March 16, 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.

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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