

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. 2011431
Issue No. 2009/4031
Case No. 1 [REDACTED]
Load No. [REDACTED]
Hearing Date: November 30, 2010
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 30, 2010. Claimant and her long-term friend 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 a material fact:

1. Claimant is a divorced, 50-year-old smoker (approximately 2 packs per week) without a driver's license secondary to an alcohol-related conviction (DUIL) who resides with her long-term friend in [REDACTED].
2. Claimant has a high school equivalency education (GED) and an unskilled work history (e.g., medical billing/retail sales/restaurants) (Department Exhibit #3, pgs 1-8).

3. Claimant reports she last worked in a temporary service position but she has not actually been gainfully employed in several years, although she occasionally files on-line applications (most recently approximately 3 months ago).
4. On July 30, 2010, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA).
5. When the department denied that application, claimant filed a hearing request, held by conference telephone on November 30, 2010.
6. Claimant stands approximately 5'4" tall and weighs approximately 110 pounds; she is right hand dominant.
7. Claimant is fully independent in all self cares and basic work activities; additionally, she has been instrumental in helping her long-term friend complete remodeling projects (e.g., install ceramics/lay linoleum) around the house he owns where they currently reside.
8. Claimant alleges she is completely unable to engage in any type of substantial gainful employment due to chronic, excruciating, disabling pain in multiple body areas (e.g., neck/back/wrists/hips/etc.).
9. Claimant's March 2010 cervical x-rays confirm she has spurring at C5-6, but no fractures, disc herniations, subluxation, kyphosis or other severe orthopedic impairments are shown (Department Exhibit #1, pgs 9 and 10).
10. Claimant's June 2010 EMG results demonstrate no left upper extremity radiculopathy, no mononeuropathy, no peripheral neuropathy, and no axonal involvement or active denervation; however, mild right carpal tunnel syndrome primarily affecting claimant's sensory fibers was shown (Department Exhibit #1, pgs 11 and 12).
11. A consulting hematologist diagnosed claimant with increased red blood cells (secondary polycythemia), currently stable with no evidence of cancer, per his August 19, 2010 Medical Examination Report (DHS-49)(Department Exhibit #1, pgs 13 and 14).
12. This specialist noted absolutely no other abnormalities on physical examination that day (Department Exhibit #1, pg 14).

13. Likewise, claimant reports her treating doctor is currently prescribing the standard pain medications ([REDACTED]) and a low dose anti-depressant ([REDACTED]) to manage her self-reported pain symptoms and depression; no other prescription medications are noted (Department Exhibit #1, pgs 5 and 7).

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 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).

...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).

[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).

Claimant does not qualify for the MA/SDA coverage she seeks because she has not established the existence of a medically severe condition, or combination of conditions, which would prevent employability for the necessary durations required by MA and SDA program rules. In fact, all of the credible, objective medical evidence of record suggests claimant is exaggerating pain symptoms for secondary gain (disability allowance). In short, absolutely nothing in this file establishes claimant is physically or mentally incapable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Therefore, claimant's disputed MA/SDA application must remain denied, in concurrence with the department's State Hearing Review Team (SHRT) decision dated October 13, 2010 (Department Exhibit #2).

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.

