

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: 2007-21202

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 3, 2008

Sanilac 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 April 3, 2008. Claimant personally appeared and testified. She was assisted by

[REDACTED]

[REDACTED]

Did the department properly deny claimant's December 29, 2006 Medicaid (MA)/retro-MA application based on a finding she lacked a legally disabling condition?

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 38-year-old female who married a man she met on the Internet approximately seven months after her divorce was final in January 2007.

(2) Claimant is morbidly obese at 5'3" tall and 250 pounds (BMI=44.3).

(3) Claimant's medical history is positive for recurrent, severe Major Depressive Disorder with multiple suicide attempts following the court's removal of three biological children from her custody in 2005 (New Medical Evidence, pgs 6 and 42).

(4) Claimant quit school after completing seventh grade at age 16 because she became pregnant; she has an unskilled work history in cooking and cashiering but she has not been employed anywhere since 2005 (Department Exhibit #1, pgs 6-8; New Medical Evidence, pg 43).

(5) Claimant was the sole occupant and unrestrained driver in a motor vehicle rollover accident which occurred on September 25, 2006 (hospitalized: 9/25/06-10/3/06) (Department Exhibit #1, pg 19-33).

(6) Hospital tests discovered: (1) an old, healed cervical fracture at C1-2 with new soft tissue injuries; (2) a comminuted right ankle medial malleolar fracture; (3) a right calcaneus fracture with compression; (4) a right talus fracture; (5) a left hand, fifth metacarpal fracture; and (6) right eye lacerations (Department Exhibit #1, pgs 26 and 31).

(7) Eight months earlier, in January 2006, claimant initiated mental health treatment secondary to suicidal ideation; she was treated with medications and therapy (Department Exhibit #1, pgs 61-64).

(8) In September 2007, claimant had another psychiatric admission for Major Depression (9/17/07-9/21/07), this time complicated by multiple, self-inflicted skin abrasions on her face and extremities (New Medical Evidence, pgs 5-9).

(9) Claimant was participating in outpatient mental health counseling at the time of this hospital admission, and a Psychiatric Examination Report (DHS-49D) completed the previous April (4/11/07) notes she had marked and moderate difficulties in many of the four areas of mental/emotional/cognitive/social functioning required to be assessed during the disability determination process (Department Exhibit #2, pgs 1-4).

(10) During claimant's September 2007 psychiatric hospitalization her Global Assessment Function (GAF) was 25 and she was noted to still have a right foot brace secondary to her 2006 rollover accident (New Medical Evidence, pg 9)(See also Finding of Fact #5 and #6 above).

(11) As of claimant's April 3, 2008 hearing date, she was continuing outpatient therapy and medications [REDACTED]; however, she was still routinely having suicidal thoughts and panic attacks, as well as continuation of her self-inflicted scarring activity combined with chronic sleep disturbances, pervasive loss of interest in most activities of daily living, difficulty thinking/remembering and decreased daily energy.

(12) Additionally, an April 4, 2007 Medical Examination Report (DHS-49) completed by claimant's treating orthopedic specialist restricts claimant to less than sedentary work secondary to post-traumatic stress arthritis stemming from the multiple fractures she suffered in her 2006 rollover accident which are mostly unresponsive to her current pain medication [REDACTED] (Department Exhibit #2, pgs 5-9).

#### 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 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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant has remained unemployed since 2005; consequently, the analysis must continue.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant had significant physical and mental limitations upon her ability to perform basic work activities at all times relevant to her disputed application. As such, this analysis must continue.

Medical evidence has clearly established that claimant had an impairment (or combination of impairments) that had more than a minimal effect on claimant’s work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant’s medical record will not support a finding that claimant’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevented claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant could not return to any of her past relevant work during the period now in dispute under her December 29, 2006 MA/retro-MA application because she was physically and mentally incapable of sustained gainful activity at that exertional level.

In the fifth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant had the residual functional capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds

that claimant's exertional and non-exertional impairments rendered claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). In short, the department has failed to provide vocational evidence which establishes that claimant had the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there were significant numbers of jobs in the national economy which the claimant could have performed despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant was disabled for purposes of the MA/retro-MA program under her disputed application filed on December 29, 2006.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in denying claimant's December 29, 2006 MA/retro-MA application.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's December 29, 2006 MA/retro-MA application and award her all the benefits to which she may be entitled, as long as she met the remaining financial and non-financial eligibility factors in the relevant time period.

(2) The department shall review claimant's physical and mental condition for improvement in February 2010, unless she has been approved for Social Security disability benefits by that time.



(3) At review, the department shall schedule claimant for independent consultative physical and psychological evaluations, in addition to collecting all updated medical records from her treating providers from 2007 forward.

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

Date Signed: January 19, 2010

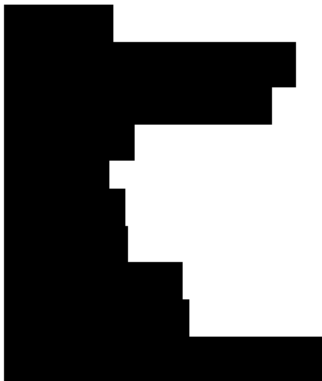
Date Mailed: January 20, 2010

**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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