

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: 2007-23206

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 27, 2007

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 November 27, 2007. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On November 28, 2006, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On January 3, 2007, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On January 12, 2007, the department caseworker sent claimant notice that her application was denied.

(4) On April 18, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 29, 2007, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant was successfully treated for lymphoma. While radiation and chemotherapy is expected to make it difficult for someone to work, the claimant was doing well within six months of biopsy with only a couple of weeks of radiation remaining. Neither the disease nor the affect of the treatment would have been expected to lead to a disability of 12 months or greater. The medical evidence of record indicates that the claimant's condition was improving and was expected to improve further within 12 months since the date of biopsy surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(6) On the date of hearing, claimant was a 43-year-old woman whose birth date is [REDACTED]. Claimant was 5' 9-1/2" tall and weighed 216 pounds. Claimant had a GED and attended the 10th grade. Claimant also attended one and a half years of nursing education and had vocational training as a nurse's assistant.

(7) Claimant last worked March 16, 2006 as a histology technician and was terminated because she couldn't return to work. Claimant also worked as a medical assistant in her past.

(8) Claimant alleges as disabling impairments: stage 2A Hodgkin's lymphoma.

(9) On the date of hearing, claimant waived the time periods and requested to submit additional medical information. This Administrative Law Judge requested the department to seek

additional medical information to determine claimant's current status. The information was not returned to this Administrative Law Judge and this Administrative Law Judge closed the hearing record on February 20, 2009.

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).

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

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).

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).

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).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and stopped working around March 16, 2006. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that medical records indicate that claimant had successful treatment for stage 2A Hodgkin's disease that was discovered by a biopsy in [REDACTED]. Clinical notes of [REDACTED] and [REDACTED] indicate her physical exam was within normal limits with the exception of evidence of previous biopsy. She had three weeks of radiation therapy pending. (Page 62) Medical Examination Report of [REDACTED] [REDACTED] indicated that claimant has a diagnosis as stated above. Her condition was considered stable. Other than the biopsy scar, no pertinent abnormal findings were noted. (Page 20)

At Step 2, the objective medical evidence on the record indicates that claimant has established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or could result in death.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, claimant testified on the record that she lives with her sister and a niece and that she is single and was evicted in [REDACTED] because she didn't have any income. Claimant testified that she does have a driver's license and drives two to three times per week to church and to the doctors about 10 to 15 miles. Claimant testified that she makes sandwiches and that her sister and daughter do her grocery shopping for her. Claimant testified that she doesn't clean her home. Claimant testified that she can walk one to two blocks, and then can stand for 30 to 40 minutes and sit for 30 minutes to an hour at a time. Claimant testified that she is able to shower and dress herself but can't squat because it hurts her stomach. Claimant testified that she can't bend at the waist or tie her shoes but she can touch her toes. Claimant testified that the heaviest weight she can carry is 5 to 10 pounds and that she is right handed and that her hands and arms are fine and that her legs and feet are fine. Claimant testified that she has stomach and head pain which is a 7 or 8 on a scale from 1 to 10 without medication and with her medication is the pain is a 3. Claimant testified that she stopped smoking in [REDACTED] and that her medical insurance extended [REDACTED] and she finished chemotherapy in [REDACTED].

Claimant testified that in a typical day, she gets up and takes a shower, puts clothes on and gets a sandwich and eats. Claimant testified that she gets sleepy from her medication and usually sleeps about 10 hours a day and has sporadic sleep at night. Claimant testified that she cannot do her prior job and that her exposure to chemicals would aggravate her condition. Claimant testified that she had clavicular surgery in [REDACTED]. Claimant testified that she could probably not do her prior job because she couldn't be around the chemicals. Therefore, this Administrative Law Judge will not disqualify claimant at Step 4. However, the objective medical

evidence on the record does not indicate that claimant could not perform her prior job. There are no limitations listed by any of her doctors that she cannot work around any type of chemicals.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when

it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. There was no additional medical information submitted to show that claimant does still have some residual damage from her stage 2A Hodgkin's lymphoma. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months beyond her initial discovery and biopsy of her disease. However, this Administrative Law Judge will determine that claimant would have been disabled for a closed period of time between March 2006 and March 2007. Therefore, this Administrative Law Judge finds that claimant was disabled for purposes of Medical Assistance benefit eligibility from the November 28, 2006 application date to March 31, 2007 and the department is ordered to open a limited Medical Assistance benefit case for that time period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately establish on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance benefits. The department did not provide the additional medical information from claimant's oncologist which this Administrative Law Judge ordered the department to do. This

Administrative Law Judge is unable to determine whether or not claimant is still disabled for purposes of Medical Assistance benefit eligibility. This Administrative Law Judge will determine that claimant is eligible to receive Medical Assistance benefits from the November 28, 2006 application date through March 31, 2007 for a closed period of time because she did suffer from Hodgkin's lymphoma and was receiving chemotherapy and radiation treatment.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's November 28, 2006 application and to open an ongoing Medical Assistance benefits case if claimant is otherwise eligible for the months of November and December 2006 and January, February and March 2007 and reopen claimant's benefit case for purposes of Medical Assistance benefit eligibility.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 16, 2009

Date Mailed: March 17, 2009

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]