

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

SOAHR Docket No. 2007-787REHD
DHS Reg No: 2006-10935
Case No: [REDACTED]

[REDACTED],

Claimant

_____ /

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Rehearing granted on August 27, 2008. Claimant was represented by [REDACTED]. The record was held open to allow Claimant's representative to obtain additional medical documentation. After the additional documentation was received, it was forwarded to the State Hearing Review Team (SHRT) for review.

ISSUE

Did the Department properly determine that Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P) for the retro months of November and December 2005, and January 2006?

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 February 16, 2006, Claimant applied for MA-P benefits retro to November 2005, based on having pancreatitis with an onset date of February 2, 2006, Psudotumor cerebri, and migraines.
- (2) On March 25, 2006, the Medical Review Team (MRT) denied Claimant's request for MA-P benefits.
- (3) On March 27, 2006, the Department sent Claimant notice that she was denied MA-P benefits.

SOAHR Docket No: 2007-787 REHD
DHS Reg No: 2007-00069
Rehearing Decision

- (4) On April 3, 2006, the Department received Claimant's hearing request, protesting the denial of MA-P benefits.
- (5) The State Hearing Review Team upheld the denial of MA-P benefits.
- (6) On November 9, 2006, Administrative Law Judge Jay W. Sexton issued a Decision and Order in which he upheld the Department's denial of Claimant's application for MA-P and retro MA-P benefits.
- (7) On August 31, 2008, Claimant filed an application for Supplemental Security Income (SSI) with the Social Security Administration (SSA).
- (8) Subsequent to the Rehearing held on October 22, 2008, and receiving Claimant's additional medical documentation, SHRT approved Claimant for MA-P benefits beginning February 2006, the month she was admitted in the hospital for pancreatitis.
- (9) On or about January 20, 2009, the Social Security Administration (SSA) determined that the Claimant met the federal SSI disability criteria beginning August 31, 2008, the date she applied for SSI.
- (10) In February 2006, Claimant was admitted to the hospital with acute pancreatitis; and laboratory data revealed chronic pancreatitis, which causes chronic daily abdominal pain and nausea.
- (11) Claimant was admitted to the hospital several times after February 2006, due to acute exacerbation of chronic pancreatitis.
- (12) On January 25, 2006, Claimant underwent a bilateral mammogram after a left breast mass was found in her upper breast; and the mammogram revealed benign findings.
- (13) According to a medical examination report dated March 3, 2005: Claimant was given a current diagnosis of sciatica; the pertinent abnormal findings were that she had an antalgic gait with decreased range of motion in the lumber spine; she was 5'2 ½ and weighed 170.6 lbs; her neurological exam did not reveal any abnormal findings; she had a decreased mood; and the physical examination did not reveal any other significant abnormal findings. (Department Exhibit 1, p. 3)
- (14) Claimant has past relevant work experience as a "lab worker" and cashier.
- (15) Claimant was not engaged in Substantial Gainful Activity at any time relevant to this matter.

(16) Claimant has a high school education and a "Lab certificate."

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 Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105; MSA 16.490(15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

[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).

...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).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

"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.

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).

Since Claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

...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).

...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).

...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).

...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).

[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).

...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).

Because of the most recent SHRT decision and SSA disability determination, it is not necessary to discuss the issue of disability effective February 2006. (See PEM Item 260). The only issue to be resolved is whether Claimant met the MA-P disability standard for the period of November 2005 through January 2006.

Claimant was not engaged in substantial gainful activity at any time relevant to this matter. Therefore the analysis will continue.

Claimant's objective medical documentation fails to establish that she had a combination of medical problems which met the MA-P severity and duration standard during the time period in question. However, a finding of a severe impairment at Step 2 is a diminimus standard. Therefore, the analysis will continue.

Claimant failed to establish that she had a severe impairment which met or equaled a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1 during the time period in question. Therefore, the analysis continues.

Claimant failed to provide any medical documentation which establishes that she was unable to do any of her past relevant work during the period of November 2005 through January 2006. Claimant submitted a medical examination report, dated June 27, 2006, from a medical doctor which states that Claimant is limited primarily by her obesity and her intermittent recurrent pain. The doctor stated that "more recently" Claimant was having problems with persistent daily abdominal pain that never really abated since her bout of acute pancreatitis. Claimant applied for MA-P benefits based on having pancreatitis with an onset date of February 2006, Psuedotumor cerebri, and migraines. Claimant was approved for disability benefits, beginning February 2006, based on having a severe physical impairment involving chronic pancreatitis. However, she failed to provide objective medical evidence to establish that her Psuedotumor and migraines prevented her from doing any of her past relevant work during the time period in question. A client's statements about the intensity, persistence, or limiting effects of symptoms, such as pain, must be consistent with the objective medical evidence and other evidence. The medical signs or laboratory findings must show that the client has a medically determinable impairment that could reasonably be expected to produce symptoms, such as pain. 20 CFR 416.929. It can reasonably be expected that Claimant was experiencing pain due to migraines. However, there is no objective medical evidence to substantiate the frequency, degree, and level of pain described by Claimant. According to the Medical Examination Report, DHS-49, dated June 27, 2006, the medical doctor was unable to give a more complete physical examination and more thoughtful discussion of Claimant's limitations "due to such short notice of the need for this information and inability to schedule an examination to specifically address the concerns on the DHS-49."

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).

Even if the analysis continued to the last step of the sequential evaluation, this Administrative Law Judge would find that Claimant was able to do sedentary work during the period of November 2005 through January 2006. On January 25, 2006, Claimant underwent a bilateral mammogram which revealed benign findings. According

SOAHR Docket No: 2007-787 REHD
DHS Reg No: 2007-00069
Rehearing Decision

to a medical examination report dated March 3, 2005, Claimant was given a current diagnosis of sciatica. The only pertinent abnormal findings were that she had an antalgic gait with decreased range of motion in the lumber spine. However, her neurological exam did not reveal any abnormal findings, and the physical examination did not reveal any other significant abnormal findings.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Claimant was considered a young individual with a high school education and unskilled work experience at the time relevant to this matter. 20 CFR 416.963, 20 CFR 416.964 and 20 CFR 416.968. Using Medical Vocational Rule 201.18 as a guideline, Claimant was not disabled. According to that Rule, a young individual, age 45-49, with just a limited educational background and unskilled work experience, limited to sedentary work, is not disabled.

In conclusion, Claimant failed to establish that she met the standard for disability as set forth in the Social Security regulations for the period of November 2005 through January 2006. Accordingly, the Department's MA-P eligibility determination for the retro MA-P months in question must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department properly determined that Claimant did not meet the MA-P disability standard during the period of November 2008 through January 2006.

Accordingly, the Department's MA-P eligibility determination is AFFIRMED.

/s/

Marya A. Nelson-Davis
Administrative Law Judge
For the Department of Human Services

Date Signed: May 5, 2009

Date Mailed May 7, 2009

[REDACTED]
SOAHR Docket No: 2007-787 REHD
DHS Reg No: 2007-00069
Rehearing Decision

cc:

[REDACTED]

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.