

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: 2008-18295

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 23, 2008

Kalamazoo 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 July 23, 2008. Claimant personally appeared and testified. She was assisted by

[REDACTED]

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 divorced, 51-year-old high school graduate with two years of post-secondary education who has not been gainfully employed in several years although she

stated at hearing she worked briefly as an unskilled factory machine operator for a temporary services agency in 2001 (Department Exhibit #1, pg 10).

(2) Claimant stands approximately 5'6" tall and weighs 175 pounds; she is right hand dominant.

(3) Claimant's past medical history is positive for leukemia; however, she went into remission after treatment and no recurrence existed as of her July 23, 2008 disability hearing date.

(4) On November 29, 2007, claimant applied for disability-based MA/retro-MA/SDA.

(5) Claimant's August 20, 2007 abdominal and pelvic CT scans confirmed (during the retro-MA period) little change from her 2006 study which evidenced hepatic cirrhosis with portal hypertension, but no obvious varices (Department Exhibit #1, pg 26).

(6) Claimant was hospitalized overnight in August 2007 for black tarry stools (melena), nausea and left upper/lower pain (Department Exhibit #1, pg 293-298).

(7) Due to claimant's history of gastric bleeds with multiple past blood transfusions, the hospital doctor decided to do an upper endoscopy to make sure claimant's healed gastric ulcers had not returned as evidenced by her negative GI work-up within the previous three months (Department Exhibit #1, pgs 293 and 294).

(8) Claimant's endoscopy showed no recurrence of gastric ulcers but mild distal esophagitis without complications (erosions, ulcers, masses, varices or strictures) was verified (Department Exhibit #1, pg 298).

(9) Mild to moderate right hip osteoarthritis also was seen and [REDACTED] was prescribed for pain management (Department Exhibit #1, pg 297).

(10) In November 2007 (the disability application month), claimant was again hospitalized overnight for heavy menstrual bleeding/clotting (Client Exhibit A, pgs 1-9).

(11) Claimant got four units of packed red blood cells due to her extremely low hemoglobin level; by discharge she felt quite well, was no longer short of breath, and was able to tolerate moderate activity (Client Exhibit A, pg 1).

(12) Claimant's continuing residuals include chronic iron deficiency anemia and pancytopenia; consequently, ongoing [REDACTED] have been prescribed (Client Exhibit A, pg 2).

(13) In March 2008, claimant elected to attempt definitive management of her continuing irregular menses with Novasure endometrial ablation and hysteroscopy, which was performed on March 10, 2008 (Client Exhibit A, pg 15).

(14) During this hospitalization, claimant underwent pulmonary function testing (spirometry) which revealed a mild degree of airway obstruction; no subjective change in claimant's breathing was noticed by the pulmonary therapist after 2.5 mgs of [REDACTED] was administered (Client Exhibit A, pgs 11-13).

(15) Claimant stated at her July 23, 2008 disability hearing she uses [REDACTED] and [REDACTED] inhalers as needed to manage her shortness of breath symptoms.

(16) Claimant was treated for a second bout of black tarry stools, nausea and cramping during a two day hospitalization in June 2008 (Client Exhibit A, pgs 17-30)(See also Finding of Fact #6 above).

(17) Claimant's June 2008 discharge summary confirms alcoholic cirrhosis with ongoing alcohol abuse, completely against medical advice in patients with an extensive GI bleed history (See also Finding of Fact #7 above).

(18) Claimant was discharged in stable condition with resolution of the ground emesis and other symptoms, as well as recommendation for a possible capsule endoscopy via her treating physician if necessary after continued out-patient monitoring (Client Exhibit A, pg 17).

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.

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).

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.

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).

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).

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).

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 has not been gainfully employed at any time within the last 15 years.

At Step 2, claimant's diagnosed impairments, in combination, have left her with some pain, fatigue and shortness of breath symptoms during multiple, brief hospitalizations. However, it must be noted no severe mental impairments have been shown, and claimant's symptoms are all stabilized by the time of hospital discharge, with the exception of her chronic anemia, which is being adequately managed with [REDACTED].

It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed physical impairments 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, claimant has not established the existence of any relevant work history. As such, this analysis must continue to the very last step in the required sequential evaluation process.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 51-year-old

individual with two years of post-secondary education and no relevant 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, as that term is defined above.

Claimant's biggest barrier to employability appears to be her lack of connection to the competitive work force. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with her skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions because she can return to light work, as directed by Medical-Vocational Rule 202.13.

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 and properly denied her November 29, 2007 MA/retro-MA/SDA application.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: September 2, 2009

Date Mailed: September 2, 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.

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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