

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: 2008-30203

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 16, 2008

Genesee 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 December 16, 2008. Claimant and her husband personally appeared and testified.

She was assisted by [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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 right-handed, married, 44-year-old nonsmoker/nondrinker who completed 10th grade; she stands approximately 5'5" tall and is medically obese at approximately

195 pounds (BMI=32.4)(Department Exhibit #1, pg 20; [REDACTED]

[REDACTED], pg 1).

(2) Claimant has an unskilled work history but she has remained unemployed since leaving a waitress job in 2001 after being fired for dropping a bus tub and breaking glasses (Client Exhibit B, pg 3 [REDACTED], pg 1).

(3) Claimant's remote medical history is positive for gall bladder removal, a hysterectomy and asymptomatic hyperthyroidism; the above-referenced condition and medical procedures are not relevant or material to the only disputed issue in this case (i. e., her current disability status).

(4) Claimant is not engaged in any mental health treatment or counseling and she has never been hospitalized for psychiatric reasons; however, her treating doctor is prescribing Prozac and a generic form of [REDACTED] for self-reported depression, in addition to a sleep aide [REDACTED](Client Exhibit B, pg 1).

(5) Claimant has a history of high blood pressure not uncommon in obesity patients and fully capable of adequate control as long as medication compliance is maintained [REDACTED](Client Exhibit B, pg 1).

(6) On May 7, 2008, the department received claimant's disputed MA/retro-MA application filed on her behalf by [REDACTED]. (a third party liability specialist) seeking financial assistance with the expenses she incurred during an April 2008 hospitalization (Department Exhibit #1, pgs 4-6).

(7) On April 18, 2008, claimant was admitted to the hospital based on subjective reports of chest discomfort and left-sided weakness (Department Exhibit #1, pgs 23 and 24).

(8) She previously reported several episodes of numbness involving her left side which resulted in negative work-ups, but in April 2008 that was not one of her complaints (Department Exhibit #1, pgs 23 and 24).

(9) The hospital examination at that time showed normal mentation/cognition, a normal CT head scan and a normal neurological examination (Department Exhibit #1, pgs 23 and 24).

(10) Subsequently, claimant was diagnosed as having had a CVA (mild stroke) most likely secondary to her untreated high blood pressure; she was stabilized and discharged on the appropriate high blood pressure medications with Heart Healthy diet instructions and some physical therapy provided (Department Exhibit #1, pgs 47-57 and 80-82).

(11) As of claimant's December 16, 2008 hearing date (7 months post CVA), her self-reported residuals included left-sided weakness (non-dominant upper extremity) and a "bad memory" (See Finding of Fact #9 above).

(12) At hearing, claimant also reported a myriad of other symptoms across multiple body systems (e. g., chronic migraines, lower back, left arm and left leg pain with radiating numbness/weakness, audio hallucinations, shortness of breath, chest pain, etc.).

(13) Claimant's treating doctor's clinic examination report dated June 16, 2008 (2 months post hospitalization) notes mild tenderness in claimant's lumbar and left shoulder areas; additionally, claimant exhibited no difficulty walking, her lower extremities were normal, bilateral leg lifting tests caused no pain and claimant's respiration was normal without rales, rhonchi or wheezes; her blood pressure was 130/82 (Client Exhibit A, pg 26).

(14) As of claimant's disability hearing date (12/16/08), [REDACTED] were being prescribed for pain management.

(15) On January 20, 2009, claimant underwent an [REDACTED]ity [REDACTED] psychological examination.

(16) Claimant was diagnosed with: (1) Dependent Personality Disorder; (2) Dysthymia; and (3) Anxiety Disorder NOS; her Global Assessment Function (GAF) was 59 (DDS Independent Psychological Examination, pg 4).

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These federal guidelines state in part:

"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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...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).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, claimant has the burden of proof pursuant to the following section:

...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 federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with claimant's self-reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in part:

...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).

...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).

...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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...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).

Applying sequential analysis herein, claimant remains eligible at the first step since she is not currently working, and has not been gainfully employed since 2001 when she was fired from her waitress job. As such, the analysis must continue. 20 CFR 416.920(b).

The second step of the analysis is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. 20 CFR 416.920(c). As such, the analysis must continue.

The third step of the analysis looks at whether an individual meets or equals one of the listed impairments. Claimant does not. As such, the analysis must continue. 20 CFR 416.920(d).

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the physical and mental demands of the work done by the applicant in the past. 20 CFR 416.920(e).

In this case, this Administrative Law Judge finds claimant cannot return to her past waitress work on the basis of the medical evidence presented. Consequently, this analysis will continue.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence presented, this Administrative Law Judge finds Medical –Vocational Grid Rule 202.17 directs a finding of not disabled.

In reaching this conclusion, this Administrative Law Judge considered claimant's age, education, work history and documented impairments. She finds insufficient medical evidence to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in other work, specifically, light unskilled low stress work. As such, claimant's disputed application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's May 7, 2008 MA/retro-MA application based on a finding she does not meet the rules necessary to qualify for program benefits.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: December 15, 2009

Date Mailed: December 16, 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.

MBM/db

cc:

