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: 2008-11105
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
April 30, 2008
Ingham 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 30, 2008. Claimant personally appeared and testified. He wa 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 divorced, 42-year-old [redacted] who immigrated to the [redacted] in [redacted] (Department Exhibit #3, pg 1).

(2) Claimant testified at hearing he had a limited education; however, he acknowledged during an independent medical examination in September, 2008 that he actually obtained two degrees from a [redacted] university before coming to this [redacted] (Department Exhibit #3, pgs 1 and 2).

(3) Although English is his second language, claimant appeared fully capable of understanding and responding to the independent examiner's questions (Department Exhibit #3, pgs 1-4).

(4) At hearing, claimant testified he was 5'4" tall and weighed 99 pounds (which did not appear accurate).

(5) Claimant's statistics at his independent medical examination in September, 2008 established he actually weighs 179 pounds, and also, he presented as a well-developed/well-nourished/well-groomed gentlemen with normal blood pressure (118/70) (Department Exhibit #3, pg 3).

(6) At hearing, claimant testified he has not worked anywhere since 2005 or 2006; however, claimant's June 21, 2007 hospital consultation records indicate he was working then, and also, his April, 2007 records indicate he was employed as a cook at that time (Department Exhibit #1, pgs 18 and 56).

(7) In March, 2007, claimant was diagnosed with pancreatic head cancer of undocumented pathological type (malignant vs benign); claimant stated at hearing he has not participated in any follow-up treatment for this condition since undergoing the Whipple procedure (pancreaticoduodenectomy) in May, 2007 (Department Exhibit #1, pgs 41 and 55).

(8) Claimant has been an insulin-dependent diabetic for several years; this condition was documented as stable with good peripheral pulses and no lower extremity edema during a

June, 2007 hospitalization for reportedly persistent nausea, vomiting and abdominal pain; claimant's only listed medication on admission was insulin (Department Exhibit #1, pgs 49, 55 and 56). (See also Finding of Fact #17 below).

(9) On June 19, 2007, claimant's authorized representative [redacted] filed a disability-based MA/retro-MA application on his behalf.

(10) If this application had been approved the expenses associates with claimant's May, 2007 hospitalization (and beyond) would have been covered by MA.

(11) When claimant's application was denied his authorized representative filed a hearing request dated December 13, 2007.

(12) Claimant is not engaged in any mental health treatment or counseling; he gets around mostly by walking or with friends' help (Department Exhibit #3, pg 1).

(13) In June, 2007, claimant again reported intractable upper abdominal pain with persistent nausea and vomiting; his hospital consultation records document a well-healed surgical scar and no evidence of hernia, but a soft, slightly distended abdomen was noted (Department Exhibit #1, pgs 55 and 56)(See also Finding of Fact #8 above).

(14) These records reveal claimant was slightly anemic with a hemoglobin of 10, although his laboratory data was essentially normal (Department Exhibit #1, pg 56).

(15) Claimant was noted to have a fatty liver secondary to cirrhosis but his liver function test as of the June, 2007 hospitalization showed normal, stable total/direct bilirubin counts and normal, stable AST/ALT with only mildly elevated alkaline phosphates (Department Exhibit #1, pg 53.

(16) Claimant reported a questionable history of depression; however, he was not using any antidepressants as of his June, 2007 hospitalization (Department Exhibit #1, pg 54). (See also Finding of Fact #8 above).

(17) Per claimant's June, 2007 discharge summary, his medications on discharge were the usual doses of [redacted] and [redacted] medications, along with [redacted] and [redacted] for his (self-reported) pervasive, total body pain complaints and [redacted] to treat his diabetic gastroparesis (slow gastric emptying), which was the condition he was primarily treated for during this hospitalization (Department Exhibit #1, pgs 42, 46 and 47).

(18) Claimant denies any history of, or current use of alcohol/tobacco/illicit substances (Department Exhibit #1, pgs 18 and 51).

(19) Records from [redacted] where claimant underwent the Whipple procedure referenced in Finding of Fact #7 above reveal that possible drug addiction was questioned, but in the presence of his acute surgery it was felt this was probably more acute pain (Department Exhibit #1, pg 46).

(20) Claimant was re-hospitalized in August, 2007 (8/6/07-8/11/07), again reporting chronic low back pain, abdominal pain, nausea and vomiting (Client Exhibit A, pg 9).

(21) A CT scan of claimant's pelvis done at that time revealed no acute findings in the pelvis itself, but osteosclerosis in claimant's iliac wing near his sacrolilac joints was seen (Client Exhibit A, pg 11).

(22) On the day of discharge claimant was in stable condition and he looked very comfortable, but he was still complaining of abdominal pain (Client Exhibit A, pg 11).

(23) Claimant made a visit to [redacted]) on February 3, 2008, complaining of headache, nausea, vomiting and fever (Client Exhibit A, pg 13).

(24) The narcotic analgesic [redacted] was administered intravenously, but claimant continued to report 9/10 level pain at discharge although he left the ED in ambulatory condition; no learning barriers were present and written discharge instructions were provided in English (Client Exhibit A, pg 17).

(25) In July, 2008, claimant was admitted to the hospital again for three days, again complaining of significant abdominal pain which was again treated with the narcotic analgesic, [redacted] (Client Exhibit A, pg 21).

(26) Claimant's physical examination at admission revealed a well-developed, well-nourished male in no apparent distress, fully alert and oriented times three with normal blood pressure/heart rate/respiration and 5/5 extremity strength throughout (Client Exhibit A, pgs 22 and 23).

(27) Claimant reported having a Hepatitis C diagnosis and he said he was treated in [redacted], but the consulting physician was unable to illicit the form of treatment claimant had (Client Exhibit A, pg 24).

(28) The medical records submitted to date do not reveal any active treatment for this condition in the [redacted] (See also Finding of Fact #15 above).

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

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.

> ...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).

...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).

...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).

...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).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

> ...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).
>
> ...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).
>
> ...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).
>
> [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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

> A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a "medically determinable physical or mental impairment," an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.
>
> In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities…unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA/retro-MA coverage he seeks because neither he nor his authorized representative have presented any objective medical records to establish the

existence of a severe physical or mental condition lasting the requisite duration (12 months). In fact, it must be noted claimant's medical records fail to provide a medical basis for his allegedly chronic, excruciating, debilitating pain across multiple body systems. These repetitive complaints and multiple Emergency Department (ED) visits are disproportionate to all the objective test results and physical examinations contained within this record.

Furthermore, claimant's ability to tell the truth is seriously compromised by all of the inconsistencies existing within his medical records, as well as within his statements at hearing. Consequently, this Administrative Law Judge gives very little weight or credibility to claimant's testimony. Lastly, she finds these inconsistencies support a ruling that claimant is engaging in symptom magnification for secondary gain. As such, claimant's disputed MA/retro-MA application must be denied for lack of severity and duration shown.

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 June 19, 2007 MA/retro-MA 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: June 11, 2009

Date Mailed: June 12, 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: [redacted]