

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: 2008-12043
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 22, 2008
Oakland 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, a telephone hearing was held on May 22, 2008. Claimant personally appeared and testified. She was assisted by [REDACTED], a patient advocate from [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 married, 50-year-old smoker with a high school education and an unskilled work history as a service consultant for a car dealership and a food service worker (Department Exhibit #1, pgs 17 and 18).

(2) Claimant's most recent job as counter help in a local café was terminated in [REDACTED], due to a business slow-down; she has remained unemployed since then.

(3) On [REDACTED] 7, claimant was admitted to a local hospital through their [REDACTED] in severe abdominal pain with vomiting and diarrhea; she was discharged on [REDACTED] (Department Exhibit #1, pgs 105-116).

(4) Claimant's initial [REDACTED] was positive for diverticulitis with abscess; however, the second [REDACTED] showed significant improvement in the diverticulitis with no obvious abscess but with some air in the wall which was considered consistent with a walled-off abscess; the medical discharge plan was to adjust treatment pending claimant's clinical course (Department Exhibit #1, pgs 108 and 109).

(5) Claimant did not do well (her diverticulum ruptured) so a Stage-1 sigmoid colon resection with colostomy placement and drainage of a sigmoid clot abscess was necessary on [REDACTED]; that hospitalization lasted a month ([REDACTED]) (Department Exhibit #1, pgs 86-87 and 95-98).

(6) Claimant's colostomy took 12 days to open up, but at hospital discharge she was tolerating her diet and ready to go home (Department Exhibit #1, pg 79).

(7) A follow-up [REDACTED] taken on [REDACTED] showed no evidence of new or recurrent pelvic abscess, but claimant was frustrated because she felt weak and had no appetite; her colostomy continued to function appropriately and she reported minimal pain (Department Exhibit #1, pgs 73 and 78).

(8) Claimant's surgeon completed a follow-up evaluation on [REDACTED]; he indicated she needed no assistive devices for ambulation, she had no mental limitations, her

condition was improving and she was taking Vicodin ES as needed for pain management (Department Exhibit #1, pg 45).

(9) On [REDACTED], claimant applied for disability-based MA/retro-MA for help with the expenses she incurred during hospitalization and treatment of her digestive disorder.

(10) When that application was denied, claimant appealed; her hearing was held on [REDACTED].

(11) By that time claimant's weight dropped from 160 to 130 pounds (at 5'10" tall), but this is 20 pounds over what it is necessary for a disability allowance on [REDACTED], despite claimant's authorized representative's suggestion to the contrary at hearing.

(12) Four months after claimant's colostomy occurred she underwent reversal ([REDACTED])(Client Exhibit A, pg 65).

(13) Claimant did well until she started developing chronic pain and a fever, so she spend five more days in the hospital in [REDACTED] Client Exhibit A, pgs 13-21 and 65).

(14) The treating specialist discovered claimant had a pelvic abscess which completely resolved with antibiotics by her discharge date (Client Exhibit A, pg 65).

(15) In [REDACTED], eight months post diverticulitis onset, claimant returned to the hospital because she developed a colo-vaginal fistula secondary to another diverticulitis flare-up; additionally, she was found to be malnourished and in chronic pain at admission (Client Exhibit A, pgs 64 and 65).

(16) Claimant spend another 22 days in the hospital in [REDACTED] because they had to give her nutritional supplements and antibiotics before they could perform a

diverting hoop ileostomy on [REDACTED]; at discharge the specialist noted claimant's ileostomy was functioning well, and again, Vicodin ES was prescribed for pain management (Client Exhibit A, pg 64).

(17) As of claimant's [REDACTED] disability appeal hearing date, she was still using [REDACTED] for pain management and drinking nutritional supplements daily.

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.

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).

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/retro-MA at Step 1, because she has not been gainfully employed since [REDACTED] (See Finding of Fact #2 above). However, it must be noted claimant's exit from the competitive workforce that year had absolutely nothing to do with the condition she is now claiming as disabling, therefore it cannot be used to establish onset, duration or severity in this disability determination process. Nevertheless, the analysis must continue.

At Step 2, claimant's surgical residuals have left her with some weakness, fatigue and intermittent pain. However, it must be noted no severe mental impairments have been shown, and claimant's pain symptoms as documented appear capable of adequate pain management with current prescription medications.

It must be noted the law does not require an applicant to be completely symptom free before finding a 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 impairment meets 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 impairment is severe enough to meet or equal any specifically listed impairment; consequently, the analysis must continue (See Finding of Fact #11 above).

At Step 4, the record reveals claimant most likely is not medically cleared to return to waitressing/counter help, because that job requires excessive lifting, bending, stooping, standing, etc. which might exacerbate claimant's pain level or be unattainable based on restaurant sanitation rules (in light of her existing ileostomy). As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairment(s). Claimant is a 50-year-old individual with a high school education and an unskilled 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 other light work, as that term is defined above.

Claimant's biggest barriers to employability appear to be her displacement from restaurant work, in combination with her lack of recent connection to the competitive workforce. 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 MA definitions, because she can return to other light work, as directed by Med-Voc 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 eligibility standards.

Accordingly, the department's denial of claimant's [REDACTED] MA/retro MA application is **AFFIRMED**.

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

Date Signed: [REDACTED] _____

Date Mailed: [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.

MBM/db

cc: [REDACTED]