

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: 2008-16944

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 26, 2009

Oscoda 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 February 26, 2009. Claimant personally appeared and testified.

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, 56-year-old high school graduate who has not been employed in many years.
- (2) Claimant's past relevant work is in the hospital setting, with sedentary, clerical job duties in ER admissions and medical records (which she reports voluntarily leaving in 2000).

(3) On November 9, 2007, claimant applied for MA/retro-MA.

(4) On February 20, 2008, the department notified claimant her application was denied; consequently, she filed a hearing request dated March 19, 2008.

(5) Claimant's telephone hearing was held on February 26, 2009.

(6) Claimant stands approximately 5'3" tall and weighs 120 pounds; she is right hand dominant.

(7) In 2001, claimant was diagnosed with Type 2 diabetes mellitus; she is insulin-dependent and also uses oral medications for "cover" (Department Exhibit #1, pgs 213 and 324).

(8) Medical records for claimant dating back to 2004 verify a diagnosis of bilateral lower extremity diabetic neuropathy (Department Exhibit #1, pg 272).

(9) Claimant has a valid driver's license but she reports driving only short distances due to her lower extremity leg pain despite the fact [REDACTED] and [REDACTED] (prescription pain medications) are being used (Department Exhibit #1, pg 324). (10) Claimant has an extensive tobacco abuse history (35+ years); consequently, she suffers from recurrent upper respiratory ailments and shortness of breath symptoms not uncommon in such individuals; smoking cessation has been repeatedly recommended but as of claimant's hearing date, her prescriptions did not include any standard respiratory inhalers (e.g., [REDACTED] or [REDACTED] (Department Exhibit #1, pgs 188 and 300-307).

(11) Claimant has a history of high blood pressure and high cholesterol, both under adequate control with prescription medications.

(12) Claimant is not engaged in any mental health treatment or counseling and she has no history of psychiatric hospitalizations; however, her treating doctor has prescribed anti-depressants for self reported depression.

(13) Claimant underwent an independent physical examination two months after her disputed application filing on November 9, 2007.

(14) At that time (1/25/08), claimant reported a recent chest pain episode, but she had a subsequent negative cardiac work-up (Department Exhibit #1, pg 324).

(15) Claimant was described as a well-developed, well-nourished individual in no obvious distress with normal mental status (Department Exhibit #1, pg 323).

(16) A review of claimant's systems uncovered no severe physical impairments; however, claimant ambulated with a guarded gait secondary to diabetic neuropathy; at that time, use of an assistive walking device (cane) was deemed not medically necessary, and at hearing, claimant indicated her primary care physician has not prescribed one, either (Department Exhibit # 1, pgs 322-324).

(17) After reviewing claimant's medical records, the department's State Hearing Review Team (SHRT) issued a pre-hearing decision dated May 21, 2008 which states in relevant part:

The claimant retains the physical residual functional capacity to perform at least sedentary work.

The claimant has a history of clerical work which is typically performed at the sedentary exertional level in the national economy. Therefore, the claimant retains the capacity to perform her past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied (Department Exhibit #2).

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).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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.

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).

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/retro-MA at Step 1, because she has not been gainfully employed in ten years.

At Step 2, this Administrative Law Judge finds claimant's diagnosed physical impairments meet the level of duration and severity necessary to continue this analysis. However, it must be noted no severe mental impairments have been shown, and claimant's diabetes and peripheral neuropathy appear fully capable of stabilization and adequate pain control as long as medication compliance is maintained. Additionally, this Administrative Law Judge finds claimant's recurrent upper respiratory ailments can be expected to improve if she quits smoking, as has been repeatedly recommended.

Furthermore, 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, this Administrative Law Judge agrees with the department's State Hearing Review Team (SHRT) decision (Department Exhibit #2). Claimant's medical records support a finding that, despite her diagnosed physical impairments, she is capable of performing sedentary clerical work of the type she performed within the past 15 years (See Finding of Fact #2 above). As such, claimant's November 9, 2007 MA/retro-MA application must remain denied.

Claimant's biggest barrier to employability appears to be her lack of any recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with her skills, interests and abilities.

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 actaion is AFFIRMED.

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

Date Signed: February 9, 2010

Date Mailed: February 11, 2010

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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