

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: 2008-17322

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 17, 2008

Wayne 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 June 17, 2008. Claimant and her daughter 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) On January 28, 2008, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) because she recently was hospitalized (1/17/08-1/27/08) for treatment and repair of acute ruptured diverticulitis with abscess formation and an enterovesical fistula (Department Exhibit #1, pgs 15 and 16).

(2) Claimant has a sedentary work history (customer service, lead representative, hotel desk clerk); she was full-time employed until the above-referenced emergency hospitalization occurred (Department Exhibit #1, pg 8).

(3) The department initially approved cash assistance (SDA), but denied medical coverage (MA) for failure to meet the durational period necessary to qualify for that program (12 months)(Department Exhibit #1, pg 3).

(4) At application, claimant was a 61-year-old high school graduate who stood approximately 4'11" tall and weighed approximately 150 pounds (Department Exhibit #1, pgs 7 and 8).

(5) On January 21, 2008, claimant underwent a sigmoid resection and temporary colostomy placement, as well as repair/closure of the colovesical fistula (Department Exhibit #1, pgs 11-13).

(6) Postoperatively, claimant did well and she was discharged home in good condition on a regular diet with pain medication and restricted activity through a reasonable recovery period (Department Exhibit #1, pg 15).

(7) Four months later, on May 29, 2008, claimant spent another five days in the hospital for colostomy reversal surgery; no further complications were noted.

(8) Claimant's medical history is positive for a 2002 myocardial infarction with successful single stent placement.

(9) Claimant takes standard high blood pressure and high cholesterol medications, not uncommon for someone of her age with her cardiac history.

(10) Claimant also is a non-insulin dependent diabetic (diagnosed in 2002) currently well-controlled with diet/oral medication and she has asymptomatic hypothyroidism, also well-controlled with [REDACTED] for several years.

(11) Six months after claimant's diverticulitis hospitalization, specifically on June 25, 2008, she underwent an independent physical examination.

(12) Claimant reported she uses one [REDACTED] before bed for lower abdominal tenderness since surgery.

(13) Claimant's gait and stance were normal, as were all higher cognitive functions.

(14) At that examination, the doctor found claimant's height and weight to be 4'10"/154 pounds; he deemed her medically obese (BMI=32.25) but noted no limitation of mobility or activity from it.

#### 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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...[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.

...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).

...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).

...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).

[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).

Claimant does not qualify for the MA disability coverage she seeks because she has not established the existence of a medically severe condition, or combination of conditions, which could reasonably be expected to prevent employability for the continuous, 12 month durational period required under the governing regulations. In fact, six months after onset, claimant

underwent an independent medical examination which was essentially normal. Unfortunately, absolutely nothing in these medical records establishes claimant is or was incapable of working in a wide variety of unskilled jobs currently existing in the national economy for the necessary duration, which is the standard to be applied in disability determination cases. As such, claimant's disputed January 28, 2008 MA 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 determined claimant is not disabled by MA disability standards.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: July 28, 2009

Date Mailed: July 29, 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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cc:

