

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: 2008-18300

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 20, 2008

Macomb 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 August 20, 2008. 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, 53-year-old female with a 9th grade education and a history of unskilled restaurant work (barmaid/waitress) and apartment management, but she has not been employed anywhere since February 2005 (Department Exhibit #1, pg 126).

(2) In 2006, claimant was diagnosed with active Hepatitis C; consequently, the combination pegylated interferon/rivabirin treatment was initiated.

(3) Claimant completed a full course of treatment; however, her March 20, 2007 medical records indicate the doctors detected a HCV RNA level, representing a viral relapse (Department Exhibit #1, pg 10).

(4) Claimant reinitiated peginterferon treatment in 2007; she was scheduled to complete it in December 2008.

(5) Claimant's treating doctor prescribed [REDACTED] to manage the depression and irritability side effects common during antiviral therapy; her medical reports indicate she had a positive response in terms of symptom management (Department Exhibit #1, pg 15).

(6) Claimant's medical records also confirm a history of high blood pressure, adequately controlled with prescription medication (Department Exhibit #1, pgs 126 and 127).

(7) Claimant has no history of psychiatric hospital admissions and she has never been involved in substance abuse or mental health treatment or counseling.

(8) Claimant stands approximately 5'1" tall and is medically obese at approximately 185 pounds (BMI=35); she is right hand dominant.

(9) On January 17, 2008, claimant applied for disability-based MA alleging she is completely unable to do any type of substantial gainful work activity due to excruciating left knee, hip and lower back pain combined with the reported residuals from her Hepatitis C treatment (fatigue, light-headedness, depression, irritability, headaches, nausea)(Client Exhibit A, pg 1).

(10) Claimant's Medical Examination Report (DHS-49) dated August 6, 2008 notes no musculoskeletal or orthopedic abnormalities; all other systems were normal as well (Client Exhibit A, pgs 1 and 2).

(11) Six months earlier, claimant's treating gastroenterologist completed another Medical Examination Report (DHS-49), again noting all normal bodily systems and indicating claimant had the physical capacity to occasionally lift up to 20 pounds and stand/walk up to two hours daily during an eight-hour workday; additionally, no assistive devices are needed for ambulation (Department Exhibit #1, pgs 116 and 117).

(12) Claimant's 2005 lumbar spine MRI notes no canal stenosis or disc herniations, but some degenerative changes at L3-4, L4-5 and L5-S1 were noted (Department Exhibit #1, pg 102).

(13) Progress notes from August 2007 note some paraspinal tenderness upon palpation, but claimant's straight leg raising exam was negative (Department Exhibit #1, pg 113).

(14) Right elbow x-rays taken in December 2004 were completely normal (Department Exhibit #1, pgs 98 and 100).

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 regulations. These rules in relevant 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 reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in relevant 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 the sequential analysis herein, claimant remains eligible at the first step since she is not currently working, and has not been gainfully employed since 2005. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. The analysis continues.

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

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 restaurant work, because those positions included excessive standing, walking, lifting, bending, twisting, carrying, etc., which might exacerbate claimant's subjectively reported symptoms. Consequently, the 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

submitted, this Administrative Law Judge finds Med-Voc Rule 202.10 directs a finding of not disabled.

In reaching this conclusion, this Administrative Law Judge considered claimant's age, education and work history in light of her documented physical 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 work. As noted by the department's State Hearing Review Team (SHRT), claimant's treating physician's opinion summarily stating she is completely disabled is inconsistent with the great weight of medical evidence presented, and thus, it cannot be given controlling weight. 20 CFR 927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5). Put simply, when taken as a whole, the evidence in this file fails to meet the regulatory requirements necessary to qualify for disability-based MA.

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 MA application in January 2008 based upon a finding she does not meet the rules necessary to qualify for that program.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: September 10, 2009

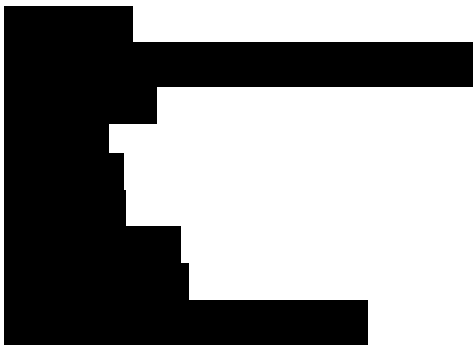
Date Mailed: September 10, 2009

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

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