

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: 2008-25454
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2008
Genesee 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 September 23, 2008. Claimant personally appeared and testified. She was 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 married, 50-year-old high school graduate who stands approximately 5'1" tall and weighs 160 pounds; she is right hand dominant.

(2) Claimant worked as a nursing home housekeeper until the summer of 2005 when she reports she “took sick.”

(3) Claimant’s medical records indicate she had total a hysterectomy in 2005; her follow-up gall bladder/pelvic/abdominal ultrasounds and abdominal CT scan (all done in 12/07) reveal no further abnormalities (Department Exhibit #1, pgs 28-31).

(4) After her hysterectomy, claimant returned to work for 5 or 6 months as a senior citizen monitor (calling bingo and handling food service distribution) until June 2007; she has been unemployed since then.

(5) On March 19, 2008, claimant filed a disability-based MA/retro-MA application claiming recurrent headaches, abdominal pain and various myalgias/artralgias cause her to no longer be capable of engaging in any type of substantial gainful work activity.

(6) Claimant has a valid driver’s license and she is fully independent in all self-cares and basic daily living activities; additionally, she needs no assistive devices for ambulation.

(7) Claimant’s May 2008 cardiac EKG stress test revealed normal sinus rhythm, normal axis, normal ventricular rate and no acute ST-T wave changes; her left ventricular ejection fraction was noted to be 60-65% (normal)(Client Exhibit A, pgs 4-11).

(8) Claimant has been diagnosed with arterial hypertension and dyslipidemia (high blood pressure/high cholesterol), both adequately controlled with prescription medication (Client Exhibit A, pg 1).

(9) Claimant reported at the hearing her back “bothers” her (hurts) after 30 or 40 minutes of sitting and her feet “bother” her (go numb) after 3 or 4 blocks of walking.

(10) A bone density scan done in April 2008 documents mildly increased lumbar spine values (per WHO Classification), evidencing early osteopenia not uncommon for someone of claimant's age (Client Exhibit B, pgs 5 and 6).

(11) In 2007, claimant was diagnosed with bilateral carpal tunnel syndrome by EMG testing, more pronounced in her right hand than her left (Client Exhibit B, pg 16).

(12) Nocturnal braces, nonsteroidal anti-inflammatory drugs and [REDACTED] were suggested for symptom management (Client Exhibit B, pg 16).

(13) Claimant is not engaged in any mental health treatment or counseling and she has no history of psychiatric/psychological impairments; however, her treating doctor has prescribed Elavil for self-reported depression.

(14) Claimant's daily living activities include playing with her grandson, reading, doing light cooking, spending time with her sister and attending church regularly.

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 rules. These federal rules state in 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 the applicant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in 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 she has not been employed since 2007. 20 CFR 416.920(b).

The analysis must continue.

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 applicant 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 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 relevant housekeeping or senior center food service work because those positions required excessive physical activity (e.g., lifting, bending, standing, walking, etc.) which might exacerbate her lower back pain and general myalgias/artralgias. Consequently, the analysis will continue.

The fifth and final step of the analysis applies the biological 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 202.13 directs a finding of not disabled.

In reaching this conclusion, this Administrative Law Judge considered claimant's documented high blood pressure/high cholesterol, osteopenia, cardiac evaluation, self-reported depression/myalgias and carpal tunnel diagnosis. She finds insufficient medical documentation

to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in other work, specifically, any number of light, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. 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/retro-MA. As such, claimant's disputed 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 denied claimant's March 19, 2008 MA/retro-MA application based on 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: October 12, 2009

Date Mailed: October 13, 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:

