

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: 2008-28938

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 1, 2008

Ingham 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 October 1, 2008. Claimant personally appeared and testified. She was assisted by

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) 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 right-handed, 55-year-old, insulin dependent diabetic with a high school education and an unskilled work history, but she left her last job cleaning offices in 2005 because she could no longer perform the job duties associated with that position.

(2) Claimant is morbidly obese at 5'1" tall and 225 pounds (BMI=42.5).

(3) The department approved full disability-based benefits for claimant effective March 1, 2008, but denied an earlier MA/retro-MA/SDA application filed on her behalf on November 30, 2007 (Client Exhibit D, pg 34; Department Exhibit #1, pg 132).

(4) Claimant suffered a right wrist fracture in July 2007 (Department Exhibit #1, pg 169).

(5) In August 2007 (the first retro-MA month) and December 2007 claimant was hospitalized for a combined total of nine days, first for treatment of a severe infection which occurred after her right wrist was surgically repaired (ORIF), then for acute cystitis complicated by acute renal failure (Department Exhibit #1, pgs 141-147 and 169-173).

(6) Claimant's February 2008 independent psychological evaluation diagnoses claimant with the following: (1) Major Depressive Disorder (recurrent without psychotic features); (2) Anxiety Disorder (with intermittent panic attacks); and (3) Alcohol Dependence (possibly in remission)(Department Exhibit #1, pgs 134-137).

(7) Claimant's February 2008 EMG report confirms upper extremity polyneuropathy, mild to moderate bilateral carpal tunnel syndrome and a C5 radiculopathy with possible with disc herniation (Department Exhibit #1, pg 123).

(8) In July 2008 (4 months after MA was approved), claimant was hospitalized again for 10 days in diabetic ketoacidosis with acute renal failure, tachycardia and gall stones; she underwent a laparoscopic cholecystectomy (gall bladder removal) on July 7, 2008 (Department Exhibit #1, pg 8).

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Claimant's authorized representative is protesting the denial of a closed period of MA/retro-MA/SDA eligibility between August 2007 (the first retro-MA month) and February 2008 because claimant was approved eligible for disability benefits effective March 1, 2008 (See Finding of Fact #3 above).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant has not been employed since 2005; consequently, the analysis must continue.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical and mental limitations upon claimant’s ability to perform basic work activities. Additionally, these combined physical and mental limitations existed at all times relevant to her November 30, 2007 MA/retro-MA/SDA application.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant’s work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant’s medical record will not support a finding that claimant’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant could not return to any of her past relevant work.

In the fifth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability.

Richardson v Secretary of Health and Human Services, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v*

Heckler, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Under these circumstances, claimant is disabled according to both MA and SDA program rules. Consequently, the department's denial of her November 30, 2007 MA/retro-MA/SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant did not meet the requirements necessary for MA approval and SDA approval when she filed the disputed November 30, 2007 MA/retro-MA/SDA application.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's disputed application and shall award her all of the benefits to which she may be entitled, as long as she met the remaining financial and

non-financial eligibility factors in the months covered by her November 30, 2007

MA/retro-MA/SDA application.

(2) The department shall review claimant's condition for medical improvement in October 2012, unless she is approved eligible for Social Security disability benefits by that time.

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

Date Signed: October 19, 2009

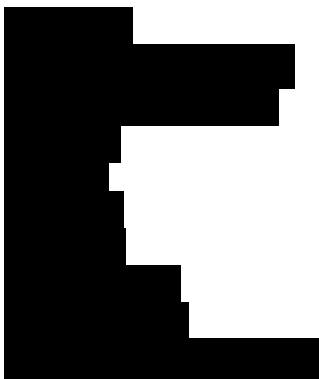
Date Mailed: October 19, 2009

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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