

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: 2009-16492  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 4, 2009  
Calhoun 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 4, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-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 divorced, 46-year-old high school graduate with two years of post-secondary education who moved to [REDACTED] from [REDACTED] in June 2008, per self report.

(2) Claimant last worked in a sedentary capacity as a receptionist/biller/accountant in [REDACTED] in 2006; prior to that, claimant held other sedentary positions in the [REDACTED] area (clerk/typist/dispatcher)(Department Exhibit #1, pg 101).

(3) Claimant currently resides with her friend in [REDACTED].

(4) On October 20, 2008, claimant applied for disability-based medical coverage (MA/retro-MA) based on Crohn's Disease initially diagnosed 10+ years ago, per self report (Department Exhibit #1, pgs 104 and 106).

(5) When that application was denied claimant requested a hearing, held June 4, 2009.

(6) Claimant's surgical history is positive for one small bowel resection secondary to Crohn's in 2005 and a hernia repair in 2007 (Department Exhibit #1, pgs 15 and 55).

(7) Claimant stands 5'3" tall and is medically obese at 200 pounds (BMI=35.4).

(8) Claimant has been diagnosed with high blood pressure not uncommon in medically obese patients and fully capable of adequate control with claimant's prescribed medications ([REDACTED])(Department Exhibit #1, pg 101).

(9) Claimant has intermittent flare-ups of her Crohn's Disease which cause severe abdominal pain, but generally her symptoms are managed effectively with the standard drugs, [REDACTED].

(10) In February 2008 (prior to moving to [REDACTED], claimant was hospitalized at the [REDACTED] for ten days for a Crohn's episode; the remainder of her follow-up systems review on March 25, 2008 was negative (Department Exhibit #1, pg 62).

(11) On April 28, 2008, claimant went to [REDACTED] Emergency Room (ER) in moderate to severe crampy abdominal pain; [REDACTED] were administered

and claimant reported feeling fine the following day without any diarrhea or belly pain (Department Exhibit #1, pgs 12-15).

(12) On July 26, 2008 (after moving to Michigan), claimant was treated at [REDACTED] in [REDACTED] for emergency evaluation and management services; she was diagnosed with colitis via an abdominal CT scan and a brief course of antibiotics [REDACTED] was prescribed (Department Exhibit #1, pgs 63-74).

### 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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a "medically determinable physical or mental impairment," an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can

be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

...[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).

[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/retro-MA coverage she seeks because she has not presented any objective medical records to establish the presence of a physical or mental condition, or combination of conditions, supportive of a reason for her severe, chronic, pervasive and debilitating fatigue and pain complaints. In fact, claimant's medical records reveal nothing more than intermittent Crohn's flare-ups which are generally kept under good control with her current medication schedule.

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. Claimant's prescription medication schedule appears adequate for providing symptom control as long as medication compliance is maintained.

Consequently, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy (including her former sedentary job) which is the standard to be applied in disability determination cases. As such, claimant's October 20, 2008 MA/retro-MA application must remain denied in concurrence with the department's State Hearing Review Team (SHRT) decision dated April 13, 2009 (Department Exhibit #2).

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/retro-MA eligibility standards.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: August 23, 2010

Date Mailed: August 23, 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.

2009-16492/mbm

MBM/db

cc:

