

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: 2009-16818
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 23, 2009
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 June 23, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

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 November 19, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On November 26, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On December 16, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On January 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 13, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(6) The hearing was held on June 23, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on June 24, 2009.

(8) On July 1, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's condition is not expected to last more than 12 months. Per 20 CFR 416.909, the claimant's condition/alleged impairment is not expected to last for a continuous period of 12 months or the claimant's impairment is expected to improve post operatively. The medical evidence of record indicates that the claimant's condition is improving and should continue to improve with treatment and would not prevent all work 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 65-year-old woman whose birth date is [REDACTED]. Claimant is 5' tall and weighs 150 pounds. Claimant is a high school graduate and is able to read and write in Spanish.

(10) Claimant has never worked outside the house and has only been a housewife. Claimant receives Social Security Administration benefits in the amount of [REDACTED] per month from her husband's Social Security. Claimant is now a widow.

(11) Claimant alleges as disabling impairments: endometrial cancer, depression, cataracts, bad feet, swelling feet, hypertension, bad back with arthritis, and a hysterectomy.

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge

reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has never worked outside the home except as a housewife. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report dated [REDACTED] indicates that claimant has cataracts, heart murmurs, dyspnea, as well as edema. Claimant has a stiff back and pain in her hands and joints and she has peripheral neuropathy as well as some depression and flat affect. Claimant had uterine cancer, abdominal pain and bloating, hypertension, impaired vision and cataracts. Her visual acuity best corrected is 20/100 in the right eye and 20/400 in the left eye. Claimant was 59.75" tall and weighed 158.3 pounds and her blood pressure was 132/72. Claimant's condition was stable. She could stand and/or walk less than two hours in an eight-hour workday because of foot pain and could sit less than six hours in an eight-hour workday because of back pain. She could not operate foot or leg controls with either feet or legs because she is limited by arthritis and could not do simple grasping, reaching, pushing/pulling, and fine manipulating on a repetitive basis with either upper extremity. Claimant needed assistance with shopping and transportation. Her limitations were expected to last more than 90 days. (Pages 1-2 of the Medical Reports)

Based upon a medical report of [REDACTED], claimant had a diagnosis of 1C grade 3 endometrial adenocarcinoma largely undifferentiated with a prominent clear cell component at the time of total laparoscopic hysterectomy, bilateral salpingo oophorectomy, bilateral pelvic and obturator lymphadenectomy, paraaortic lymphoidectomy, and lysis of adhesion on [REDACTED]. On physical examination, claimant weighed 154.4 pounds and her blood pressure was 133/76. Her pulse was 85, temperature was 97.9, and respiratory rate 16. Her general appearance was that of a healthy-appearing woman in no apparent distress. Head and neck examination was unremarkable. Oropharynx was pink and moist without ulcerations or lesions. No thyromegaly was noted. Lymph node assessment was negative in the supraclavicular, axillary and inguinal node regions. Lungs were clear to auscultation bilaterally. Cardiovascular exam revealed regular

rate and rhythm with a systolic murmur present. The abdomen was soft and non-tender with no noted hepatosplenomegaly, hernia, or mass. Her incisions were well healed. Her extremities were without edema, cords, or tenderness. Breasts were soft, non-tender, with no palpable masses and no nipple discharge. The vulva, urethra, and vagina were normal in appearance and the vaginal vault was smooth. On bimanual exam, no nodularity, mass, or tenderness was noted. The cul-de-sac was smooth. Rectal exam confirmed these findings, sphincter tone was normal, and the mucosa was palpably intact. Rectal exam was hemoccult negative. She was scheduled to see a doctor on [REDACTED] regarding external adjuvant radiation. She was scheduled for a surveillance visit every three months for the next year. (Pages 6-7)

At Step 2, this Administrative Law Judge finds that claimant did have a severe impairment that could result in death even though it was not expected to last 12 months or more. Claimant does currently have to have radiation treatment as well as treatment for the next year for her prior adenocarcinoma. This Administrative Law Judge also finds that she does have severe vision problems and does have cataracts as well as hypertension and arthritis. Therefore, this Administrative Law Judge finds that claimant has established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or could result in death. Claimant is not disqualified from receiving disability at Step 2.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

This Administrative Law Judge finds that claimant testified on the record that she does not have a driver's license because she never learned to drive. She lives with her daughter in a house and she is a widow and receives her husband's Social Security Administration benefits. Claimant has never worked outside the home and has only been a housewife. Claimant is able to cook breakfast and lunch and cooks things like oatmeal. Claimant goes to the grocery store two times per month and her daughter takes her and she doesn't need help to grocery shop. Claimant does dust, do laundry, and clean the bathroom. Claimant could walk one block. Claimant can stand for a half an hour and sit for a half an hour at a time. Claimant could not squat because of her knees or bend at the waist because of her bad back. Claimant does shower and dress herself and she gets velcro shoes and could not touch her toes. Claimant testified that the heaviest weight she can carry is a gallon of milk and that she is right-handed and that she does have arthritis in her hands and arms. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8/9 and it goes down a little with medication. Claimant testified that she has trouble climbing stairs because she has bad knees and hammertoes. On a typical day claimant gets up and talks to her grandchildren and cooks breakfast, then reads and watches television and looks at magazines. Claimant testified that she watches two to three hours of television per day.

At Step 4, claimant has never worked and therefore cannot be disqualified at Step 4 for being able to perform prior work.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

In the instant case, claimant is advanced age, is a high school graduate, and has unskilled or no previous work experience which makes her disabled under Medical-Vocational Rule 202.04 if she is limited to light work and Medical-Vocational Rule 201.04 if she is limited to sedentary work. This Administrative Law Judge finds that claimant is approved for Medical

Assistance benefits as of the November 19, 2008 application date pursuant to Medical-Vocational Rule 201.04 and Medical-Vocational Rule 202.04.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that claimant is approved for Medical Assistance from the November 19, 2008 application date.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's November 19, 2008 application for Medical Assistance benefits. The department is also ORDERED to determine if all other non-medical criteria are met. The department shall inform the claimant of the determination in writing and if claimant is otherwise eligible shall open an ongoing Medical Assistance case for claimant based upon disability as claimant does meet the disability standards based upon her combination of impairments and her advanced age and lack of work history.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 17, 2009

Date Mailed: August 17, 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.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

LYL/vmc

cc:

