

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: 2009-16902
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 28, 2009
Saginaw 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 May 28, 2009. 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, 54-year-old formerly heavy smoker (40 years) with non-insulin dependent diabetes not uncommon in medically obese patients like claimant at 5'2"/179 pounds (BMI=32.8).

(2) Claimant's past relevant employment was in school cafeterias as a cook/lunch aide; she left that type of work in 2002 to baby-sit her grandson and she has remained unemployed since then.

(3) Claimant was hospitalized briefly in July, 2008 (7/3/08-7/8/08) for an acute exacerbation of ulcerative colitis (Department Exhibit #1, pgs 45-57).

(4) While hospitalized, claimant received three units of packed RBCs through transfusion (Department Exhibit #1, pg 46).

(5) Claimant was stable at discharge with formed stool and no further bleeding; she was described as alert, comfortable and excited about going home (Department Exhibit #1, pg 46).

(6) An iron pill was added to claimant's discharge medications to address the anemia which developed while hospitalized secondary to her GI bleed.

(7) Other physical conditions include high blood pressure, high cholesterol and asymptomatic hypothyroidism, all of which are adequately controlled on her current medication schedule, as is her diabetes (Department Exhibit #1, pg 45).

(8) On October 27, 2008, claimant applied for MA/retro-MA.

(9) If this application had been approved, the medical expenses associated with claimant's July, 2008 hospitalization would have been covered by MA.

(10) When the department notified claimant about her application denial in writing on December 23, 2008, her authorized representative [REDACTED] filed a timely hearing request.

(11) Claimant has not been re-hospitalized since July, 2008; she is fully independent in all self cares/basic daily living activities and she has a valid driver's license/access to a roadworthy vehicle.

(12) Claimant's November 15, 2008 independent consultative examination report contains her most recent pulmonary function test results which are consistent with a mild obstructive lung pattern (emphysema)(Department Exhibit #1, pgs 28 and 30-34).

(13) Claimant stated at her disability application denial hearing on May 29, 2009, she has not used oxygen since last summer.

(14) Without oxygen, claimant reported being capable of walking three or four blocks before severe shortness of breath symptoms occur.

(15) A January 22, 2009 Medical Examination Report (DHS-49) completed by claimant's family practitioner indicates she has no mental limitations, she can lift at least 20 pounds one-third of an eight-hour workday, and her condition is stable (Client Exhibit A, pgs 1 and 2).

(16) The independent consultative examination report done in November, 2008 indicates claimant's gait/tone/skin was normal; additionally, she exhibited 4/4 strength in all upper and lower extremities (Department Exhibit #1, pg 28).

(17) Claimant has a high school education and she is right hand dominant.

(18) Claimant reports hot kitchens, humid weather, stair climbing and vacuuming increase her shortness of breath symptoms.

(19) Claimant's family practitioner has maintained claimant on standard inhalers [REDACTED] since her hospital discharge; the week prior to her hearing, claimant reported her blood oxygen level was 95% (See also Finding of Fact #12 above).

(20) Claimant has also been diagnosed with sleep apnea but she does not use a C-PAP machine; per her testimony at hearing, she gets approximately six hours of sleep nightly.

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.

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).

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.

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).

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).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

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).

Claimant is not disqualified from receiving MA/retro-MA at Step 1, because she has not been gainfully employed since she quit her school cafeteria position in 2002 to baby-sit her grandchild. Claimant reported she completely stopped being a [REDACTED] [REDACTED] for her grandchildren just before she filed her disputed MA/retro-MA application.

At Step 2, claimant's COPD rises to the level necessary to continue this analysis; however, no other severe mental or physical impairments have been shown. Furthermore, claimant's COPD condition has been shown to have improved through the most recent pulmonary function testing in November, 2008 and further improvement can be expected as long as smoking cessation continues.

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. Nevertheless, claimant's medically managed COPD meets the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's COPD, standing alone or combined with her other medically managed impairments, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's position that she cannot return to her kitchen work due to the environmental negativities associated with that job like excessive heat, airborne smells, and excessive lifting and carrying that would likely lead to severe COPD exacerbations. As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 54-year-old individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform a wide variety of light work jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Thus, claimant is not disabled under the MA/retro-MA definitions, because she can return to other light work, as directed by Medical-Vocational Rule 202.13.

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/reto-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: June 18, 2009

Date Mailed: June 22, 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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