

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: 2009-17501

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 21, 2009

Ingham 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 May 21, 2009. Claimant personally appeared and testified. Claimant's husband, [REDACTED] also appeared and testified. Claimant was represented by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro 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 October 7, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On January 16, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On January 22, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On February 19, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 8, 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 May 21, 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 May 24, 2009.

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

(9) Claimant is a 53-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 196 pounds. Claimant is a high school graduate and has five semesters of college. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in September 2007 binding books. Claimant has also worked in a steel mill as quality control and as a general labor person and supervisor.

(11) Claimant alleges as disabling impairments: hysterectomy, colon cancer, scoliosis, injured ankle, plates and pins in the ankle, bulging discs, a mass in the abdomen, a fistula, and gas and feces coming through the vagina as well as an infection.

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 not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED], claimant's appendix burst and she had peritonitis and she was septic and she was in the hospital for 33 days and had two surgeries.

In [REDACTED] claimant had polyps which were pre-cancerous in her intestines and she had five surgeries. In [REDACTED], claimant was bleeding vaginally and there was a stent placed in her ureter. Claimant also had kidney problems. In [REDACTED], claimant had a complete hysterectomy and developed an intestinal fistula. In [REDACTED], the ureter was repaired. In [REDACTED], claimant was hospitalized for a necrotic vagina of four to five days. (Claimant's testimony)

The objective medical evidence indicates that an x-ray of the thoracic spine indicated scoliotic curvature of the thoracic spine without evidence for acute fracture or dislocation. Multilevel spondylosis as described. There were no paravertebral masses. There were multilevel spondylotic changes with anterior osteophytes and disc space narrowing. (New Information, Page 2) An x-ray of the lumbosacral spine taken [REDACTED] indicates that claimant had compression deformities involving the superior endplates of L2, L3, and L4 of unknown age. Otherwise, multilevel spondylosis as described. (Page 3) An x-ray of the cervical spine taken on [REDACTED] indicates mild to moderate multilevel spondylosis mostly centered at C6 and C7 with bilateral foraminal stenosis as described. (Page 4) An x-ray of [REDACTED] indicates that claimant had pins and screws in her left ankle. (New Information, Page 8)

On [REDACTED], claimant had a successful right stent removal from her ureter. (Page 36) On [REDACTED], on examination claimant was 199 pounds and her blood pressure was 123/78, pulse was 101. Her abdominal exam was soft and non-tender. She had a well approximated incision and had a pinpoint hole in the midline that was not able to express at that time and some mild firmness in the left aspect of the incision but no palpable masses or hernia. Extremities were without calf tenderness. On pelvic exam, there was normal vulva, urethra, and vagina. She had a healing intact palpable cuff with no defects noted. No abnormal discharge or purulence. Rectovaginal septum was smooth. Claimant was, at that point, recovering from repair of sigmoid vaginal fistula as well as repair of her ureter. (Pages 39-40)

A [REDACTED] report indicates that claimant had a tuboovarian abscess complicated by a right mid-ureteral stricture for which she underwent a Boari flap repair in [REDACTED]. She had intermittent low abdominal discomfort. (Page 41) On examination of [REDACTED], claimant was 206 pounds and her blood pressure was 127/68, pulse was 77. In general, she was

in no acute distress. HEENT exam was unremarkable. Neck was without masses. Lymph node survey was negative. Abdomen was soft and non-tender. No palpable masses, hernia, or fluid wave. No rebound or guarding. Extremities were without edema or calf tenderness. On bimanual exam again, cuff probably palpates normal, no blood, no discharge of stool, gas or anything expels from the vagina during the exam. Rectovaginal septum was smooth. Rectal sphincter tone was normal. Exam was Hemoccult negative. (Page 43)

On [REDACTED], claimant's temperature was 97.6, pulse 87, respiratory rate 14, and blood pressure was 142/77. Pulse oximetry was 100% on room air. Claimant was an overweight woman who was clearly uncomfortable and anxious. Her head was atraumatic and normocephalic. Pupils were equal and round and reactive to light. Extraocular movements were intact. The conjunctivae were not injected. The sclerae were intact anicteric. Nose was patent. Mouth: Mucous membranes were moist and pink. The pharynx was nonerythematous. The neck was supple. There was no lymphadenopathy or thyromegaly present. Lungs were clear to auscultation bilaterally. No rales, rhonchi, or wheezes were noted. Heart: Normal S1 and S2, regular rate, with no murmurs noted. Abdomen: Positive bowel sounds, soft, diffusely tender throughout the abdomen, but particularly in the left lower quadrant with guarding, but no rebound tenderness present. There was no CVA tenderness present. Extremities: There was no edema or cyanosis present. Gynecologic examination revealed normal female external genitalia. On speculum examination, the walls of the vaginal canal appeared normal. There was no stool noted in the vaginal vault. There was a scant amount of mucus noted which was sent for culture. On bimanual examination, she had a fair amount of tenderness. The vaginal cuff seemed intact. (Pages 46-47) There was a pelvic abscess seen on the CT scan adjacent to the cervical cuff. (Page 48)

Claimant was admitted to [REDACTED] on [REDACTED]. She received IV Zosyn and remained without fevers or evidence of leukocytosis. She was diagnosed with a urinary tract infection. Her incision remained clean, dry, and tight. Her pain was controlled on oral medication at discharge. (Page 57)

On [REDACTED], claimant was diagnosed with a spiculated, avidly enhancing, and soft tissue mass within the right hemipelvis which tethers the right ureter, uterus, right ovary, sigmoid colon and right vaginal fornix. Imaging characteristic were suggestive of fibrotic endometriosis; however, additional diagnostic possibilities include malignancy as well as sequela of infectious/inflammatory mass. There was thickening of the wall of the right ureter, proximal to the mass and bilateral ovarian cysts. (Pages 69-70)

At Step 2, claimant has established by the necessary objective medical evidence on the record that she did have a severe impairment or combination of impairments which have lasted a period of 12 months or more.

At Step 3, claimant's impairments do not rise to the level necessary to specifically listed as disabling as a matter of law.

Claimant testified on the record that she last worked in 2007 binding books. Claimant has also worked a quality control person in a steel mill and as a general laborer at [REDACTED]. The current objective medical evidence in the record indicates that claimant's condition is basically normal. Therefore, this Administrative Law Judge finds that claimant could probably perform her prior work as a book binder even with her impairments. However, this Administrative Law Judge finds that claimant would have been unable to do her prior work for the period of time from when she initially had an appendix burst and she then had ongoing problems subsequent to

that. This Administrative Law Judge finds that she will not be disqualified from receiving disability at Step 4.

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).

This Administrative Law Judge finds that claimant was disabled for purposes of Medical Assistant benefits for a closed period of time and will find that based upon her ongoing medical problems from 2006 to 2008 that claimant was disabled for purposes of Medical Assistance benefit eligibility from August 2008 through August 2009, based upon the objective medical findings in the file.

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 and retroactive Medical Assistance benefits from August 2008 through August 2009, based upon the objective medical evidence contained in the file.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's retroactive Medical Assistance application and October 7, 2008 Medical Assistance application as claimant does meet the definition of medically disabled under the Medical Assistance program for that period of time. The department is ORDERED, if it has not already done so, to determine if all other non-medical eligibility are met. The department shall inform the claimant of the determination in writing.

/s/

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

Date Signed: August 18, 2009

Date Mailed: August 18, 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 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

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