

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: 2009-25057

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 21, 2009

Genesee 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 July 21, 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 retroactive Medical Assistance benefits effective August and September 2008?

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 6, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the months of October, September, and August 2008.

(2) On February 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

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

(4) On April 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 15, 2009, the State Hearing Review Team approved claimant for Medical Assistance benefits and retroactive Medical Assistance benefits to October 2008 and requested a one-year medical reexamination at June 2010, but did not approve claimant for the months of August and September 2008.

(6) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 4' 11" tall and weighs 100 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked in 1989 as a high school lunch aid. Claimant has been supported by her husband since 1989 and has also worked as a bartender and waitress in the past.

(8) Claimant alleges as disabling impairments: adenocarcinoma of the colon, cirrhosis, hepatitis C, fatigue, anxiety, depression, body aches, as well as headaches.

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 1989. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that as of [REDACTED], claimant was normal in all areas of examination except that she had hepatitis C, liver cirrhosis, hepatomegaly, splenomegaly, abdominal cramps, as well as wheezing because she is a smoker. The clinical impression was that claimant is deteriorating and that she can occasionally lift 10 pounds or less, but never lift 20 pounds. She could stand or walk less than two hours in an eight-hour day and can do simple grasping and fine manipulating with both upper extremities, but cannot do reaching or pushing/pulling with either upper extremity. Claimant cannot operate foot and leg controls. (pp. 1-2)

A medical report of [REDACTED] indicates that the claimant underwent a colonoscopic examination secondary to a history of rectal bleeding. During the examination, the claimant was found to have a 2.5 cm sessile polyp within the proximal rectum that was removed using a snare polypectomy technique. There was no obvious malignant appearance of the polyp; however, on her pathology evaluation, the claimant was found to have a tubulovillous adenoma with high-grade dysplasia with a focus of a moderate to poorly differentiated adenocarcinoma involving the submucosa. The surgical margins were free of negative. The total size of the tumor within the polyp was 0.4 cm. Given the diagnosis of the poorly differentiated adenocarcinoma,

they discussed possible surgical options regarding the condition. Claimant also had hepatitis C. On physical examination, claimant was well-developed and well-nourished in appearance, and in no apparent distress. Her lungs were clear to auscultation bilaterally. There was no evidence of hyperresonance to percussion. The claimant showed no obvious use of accessory muscles.

Cardiovascular: On auscultation of the heart, there was no evidence of abnormal sounds or murmurs. The claimant's rhythm was regular. There was no significant peripheral edema or varicosity noted. The claimant's abdomen was soft and non-tender and there were no palpable masses. The claimant had no obvious herniation. There was no obvious organomegaly and no obvious ascites. In the rectal area there was no obvious perianal mass, external hemorrhoid, fistula, or abscess noted. Examination of the anal canal revealed no significant hemorrhoidal tissue or fissure present. Digital rectal examination revealed no evidence of mass, induration, fluctuance, or prominent hemorrhoidal tissue, and the old biopsy site could not be identified with the digital rectal examination. The claimant's anatomy was grossly normal and no abnormalities were found in the genitourinary area. The musculoskeletal area the claimant had full range of motion or all four extremities. There was no cyanosis or edema. The claimant had a normal gait. Upon examination of the skin it showed no evidence of skin or subcutaneously abnormality such as a rash, lesion, or ulcer. Neurologically, there was no gross evidence of any central or peripheral neurologic deficit. The claimant was alert and oriented. There appeared to be no obvious depression, anxiety, or agitation. (pp. 3-4)

Claimant underwent surgery on [REDACTED] through a laparoscopic lower anterior resection and tolerated the procedure well. She was diagnosed with middle rectal cancer, hepatitis C, and migraine headaches. (p. 25)

In [REDACTED], on physical examination, claimant was a 52-year-old white female. She looked older than her stated age. She weighed 118 pounds and 5' 1" tall. Her blood pressure was 156/66 in the left arm in a sitting position. Temperature was normal. Respirations were 24. Snellen was 20/30 in the right eye, 20/40 in the left eye. This was without corrective lenses. Color was within normal limits. No signs of cyanosis, clubbing, jaundice, or anemia. She did look pale. She looked somewhat sallow colored. HEENT: Normocephalic. Pupils were equal, round, and reactive to light and accommodation. Extraocular muscles were intact. Sclerae were non-icteric. Conjunctiva was clear. Funduscopy was benign. Throat: Non-injected. Her dentition was poor. She had an upper denture. Neck: Supple. No evidence of any lymphadenopathy or thyromegaly. Carotids were bilaterally palpable with no bruit. Chest: Increase in the AP diameter and hyperresonant to percussion. She had some rhonchi bilaterally. Heart: Heart sounds 1 and 2 were heard. No gallop or murmur. No JVD. No edema. Abdomen: Soft and non-tender to deep palpation. No distinct masses. Bowel sounds were present and normal. She didn't have any hepatomegaly at that time. She had no spleen that was palpable. Cranial nerves II through XII were intact. The examination was otherwise grossly within normal limits. Musculoskeletal System: The claimant had a normal gait. She was not using any accessory device such as a cane. She moved rather slowly from the chair to the examining table. Range of motion of all her joints was essentially normal. On [REDACTED] claimant had hepatitis C and jaundice (p. 69).

This Administrative Law Judge finds that based upon the fact that claimant was diagnosed with adenocarcinoma in [REDACTED] that she did have a severe impairment which had lasted or will last the durational requirement of 12 months or more for purposes of retroactive Medical Assistance benefits for August and September 2008.

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

At Step 4 and Step 5, this Administrative Law Judge finds that claimant was disabled for purposes of Medical Assistance benefits for the retroactive months of August and September 2008 based upon her hepatitis C and her adenocarcinoma. Retroactive Medical Assistance is approved effective August and September 2008. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance program as of August and September 2008.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the August and September 2008 retroactive Medical Assistance application, 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. A one-year medical reexamination at June 2010 is ORDERED.

/s/

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

Date Signed: September 21, 2009

Date Mailed: September 21, 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

cc:

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