

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: 2009-2539
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 16, 2008
Lapeer 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 December 16, 2008. Claimant and her boyfriend personally appeared and testified.

She was assisted by [REDACTED]
[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 45-year-old high school graduate with substantial post-secondary education in Business Management/Marketing/Computer Science (two classes short of an Associates Degree)(Department Exhibit #1, pg 70).

(2) Claimant has an extensive past relevant work history in the Administrative Assistant field but she has not been employed anywhere since June 2000 (Department Exhibit #1, pg 70).

(3) Claimant is a former polysubstance abuser but she purports abstinence since voluntarily participating in treatment at [REDACTED] in April 2006 (Department Exhibit #1, pgs 68-69 and 88-89).

(4) Claimant is currently separated from her husband and now she lives with her long-term boyfriend in [REDACTED]

(5) Claimant has a valid driver's license and access to a roadworthy vehicle; additionally, she is fully independent in self cares and she shares the cooking, cleaning and yard work with her boyfriend, per self report.

(6) Claimant is not engaged in any mental health treatment or counseling; however, her treating physician has prescribed [REDACTED] and [REDACTED] for self-reported depression; no other prescription medications are noted.

(7) A health screening questionnaire claimant completed when she was in treatment at [REDACTED] is essentially negative, reporting only occasional anxiety and slight depression as ongoing impairments (Department Exhibit #1, pgs 109 and 110).

(8) On June 26, 2008, claimant's authorized representative filed a disability-based MA/retro-MA on her behalf.

(9) If this application had been approved, the medical expenses claimant incurred in May 2008 (an appendectomy), June 2008 (excision of a Grade 1 liposarcoma in her right thigh) and July 2008 (negative right breast biopsy) would have been covered by MA (Department Exhibit #1, pgs 3-9 and 23-30).

(10) Claimant spent the standard recovery periods after each of the above-referenced procedures and no subsequent complications arose, according to the medical records submitted at hearing (Department Exhibit #1, pgs 1-109).

(11) A February 2009 mental assessment completed by [REDACTED] (the local [REDACTED] agency) states in relevant part:

Mental status examination reveals an attractive middle-aged white female who has good grooming and hygiene. She is quite verbal and her affect is appropriate although she was somewhat tearful at times during the interview. Her moods did fluctuate somewhat. She was a good historian and was able to volunteer information and was responsive. Her memory and orientation appears to be grossly intact. Her speech was goal directed, logical and associative. Her moods are somewhat labile at this time. Current Global Assessment Function (GAF): 54.

Assessment: Need to obtain records from her hospitalizations and her neurological and psychological testing if they're available. A referral to [REDACTED] for evaluation perhaps ongoing psychological testing as well. At this time it is recommended she continue her antidepressants and monitor. She may very well be a candidate for mood stabilizers as well. Assessment of her psychological status to determine her level of functioning is recommended (Client Exhibit A, pgs 6 and 7).

(12) Claimant's long-term boyfriend testified she sometimes gets curt and snappy and he doesn't like to leave her alone for too long because she gets depressed.

(13) Claimant testified her days usually start having coffee with her boyfriend before he leaves for work, then she plays with her dog or the neighborhood kids or takes long naps.

(14) A January 2009 Medical Examination Report (DHS-49) completed by the surgeon who excised claimant's right thigh liposarcoma in June 2008 states she does not have any remaining functional limitations secondary due to this procedure (Client Exhibit D, pgs 1 and 2).

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).

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).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...[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).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

[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 disability coverage she seeks because neither she nor her authorized representative has presented any medical evidence to establish the existence of a medically severe condition, or combination of conditions, which could reasonably be expected to prevent employability for the continuous, twelve month durational period required under the governing regulations. In fact, claimant's medical records establish only that she is a fully functioning individual of at least average intelligence who is physically and mentally capable of being employed in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed disability application must remain denied.

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 disability 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: December 15, 2009

Date Mailed: December 16, 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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