

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: 2009-2602
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 28, 2009
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 April 28, 2009.

ISSUE

Was the physical disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds the below material/undisputed facts regarding the claimant:

(1) Medicaid retroactive to January 1, 2008 application on April 22, 2008 was denied on July 15, 2008 per PEM 260.

(2) Vocational factors: age 64, high school education, and past semi-skilled work as an unemployment claims taker, semi-skilled administrative assistant to a chiropractor, an office manager in a prosthetic facility.

(3) Disabling symptoms/complaints: limited use of right shoulder and pain when lifting shoulder; weakened condition from multiple surgeries from [REDACTED]

[REDACTED].

(4) Substantial gainful work: not since [REDACTED].

(5) Medical reports of exams:

[Physical impairment only]

(a) In [REDACTED], the claimant had surgery on her right shoulder for skin cancer and unable to work.

(b) In [REDACTED], the claimant went into the hospital for a colostomy operation which was delayed in order to correct a mass with medications.

(c) [REDACTED] report states there is complex history in claimant's chart. We have been waiting for her diverticulitis to settle down to do an elective bowel prep. She continues to have fevers, white blood count and significant abdominal pain. Risk and indications for this then were discussed with the including wound infection, bleeding, applications with the anesthesia, damage or danger to adjacent structures such as the ureter, possibility that this would need to be left as a colostomy, possibility that a colostomy would be needed in the future should she have an abscess or leakage after the operation. She desperately wanted to avoid a colostomy though but did a signed consent for the operation.

Midline incisions were then reclosed using a 1-0 vicryl plus stitch and staples. (Medical Packet, pages 63 and 65.)

(d) [REDACTED] report indicates that claimant developed a fever (Medical Packet, page 67).

(e) [REDACTED] report states the claimant is early developing bilateral infiltrates including the upper and lower lobes (Medical Packet, page 77).

- (f) [REDACTED] report states the claimant in early [REDACTED] had complicated diverticulitis requiring surgical resection. She experienced wound infection and dehiscence. Subsequently, she had a small bowel obstruction which is resolving. On [REDACTED] she had a peripherally inserted central catheter placed via the right arm and was begun on total parenteral nutrition. By mid-to-late [REDACTED], she was developing fevers and a leukocytosis 2600. This is when she was felt to have wound infection and eventual dehiscence. (Medical Packet, page 74.)
- (g) [REDACTED] report states the claimant has mild interval worsening in the left retrocardiac and left parahilar regions when prepared to [REDACTED] study. (Medical Packet, page 78.)
- (h) [REDACTED] report states a mobile AP supine view of the abdomen was obtained centered upon the diaphragm for evaluation of feeding tube position. There is a theme to which extends into the stomach and curls back on itself within the fundus of the stomach with the tip of the feeding tube position near the GE junction. (Medical Packet, page 81.)
- (i) [REDACTED] report states the claimant has a distended tendon and hydropic-appearing gallbladder with extensive internal echos compatible with gallbladder sludge and there is gallbladder wall thickening. (Medical Packet, page 90.)
- (j) [REDACTED] report states the claimant has had intermittent problems with diverticulitis that had crescendoed to a perforation. She was found dehydrated, malnourished, unable to speak or call for help, by a friend and brought into the hospital (Medical Packet, page 98).
- (k) [REDACTED] report states the claimant had her cholecystostomy tube placed last week, and is still quite sore. It averted her chronic/acute cholecystitis, and will need to be in place for six weeks. Concluding that, we will need to do a cholecystectomy and I am not sure yet what technique will be necessary (Medical Packet, page 102).

- (l) [REDACTED] report states the claimant was placed on the fluoroscopy table in supine position. A 22-gauge 15-cm Chiba needle was advanced into the lumen of the gallbladder confirmed by ultrasound. (Medical Packet, page 100.)
- (m) [REDACTED] report states the claimant has developed bilateral pleural effusions and these were tapped. (Medical Packet, page 99.)
- (n) [REDACTED] report states the claimant has survived diverticulitis with resection, abscess, tube drainage of abscess, and then acute on chronic cholecystitis that was managed with a tube cholecystostomy. She is doing reasonably well, although recently there were questions of the tube being dislodged from traction. Follow-up studies seem to indicate that it was still in place in draining.
- (o) [REDACTED] report states the remainder of the upper laparoscopy was tolerable for a laparoscopic cholecystectomy. The access point of the cholecystomy tube was through the right lobe of the liver. (Medical Packet, page 127.)
- (p) [REDACTED] report states the claimant's gallbladder was removed (Medical Packet, page 128).
- (q) In [REDACTED] the claimant was hospitalized for corrective repair of previous surgeries.

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).

Facts above are undisputed.

"Disability" is:

...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.

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean 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).

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).

The burden of proof is on the claimant to establish by a preponderance of the medical evidence that she is medically disabled, as defined above. PEM 260.

Five steps are followed in the determination of disability. If disability can not be established at any point in the review, there is no further review. 20 CFR 416.920(a).

Step #1: Current work activity

Regardless of your condition, you are not disabled if you are currently performing substantial gainful activity. 20 CFR 416.920(a).

The claimant was not working on date of application, nor currently. Therefore, the sequential evaluation must continue to Step 2.

Step #2: Impairment severity/duration

Disability requires the establishment of a severe physical impairment, as defined above, which has lasted or can be expected to last for continuous 12 month duration. 20 CFR 416.920(a) and (b). A *de minimus* standard is used—any ambiguities are determined in the claimant's favor.

In [REDACTED], the claimant had surgery on her right shoulder for skin cancer. In [REDACTED], she went into the hospital for a colostomy operation which was delayed in order to correct a mass with medications.

In [REDACTED], the claimant was hospitalized and two feet of her colon were removed. Then, she came down with an infection. On [REDACTED] she was discharged from the hospital.

In [REDACTED], the claimant was hospitalized for placement of a gallbladder drainage tube.

On [REDACTED], the claimant had her gallbladder removed and discharged home on [REDACTED].

In [REDACTED], the claimant was hospitalized for repair of previous surgeries.

The claimant testified that during these intermittent periods out of the hospital, she stayed with her son and daughter-in-law because of needed care; that even when she returned to her home, they took care of her in her home. She said she is still in a weakened condition and has developed a diarrhea problem.

The above undisputed facts establish the severity/duration requirement. Therefore, Step 2 has been established and the analysis must continue to Step 3.

Step #3: Social Security Listing

Disability is not established if a severe impairment/duration under Step 2 does not meet/equal a Social Security listed impairment(s). 20 CFR 416.920(d).

Claimant introduced no medical evidence, specifically addressing any Social Security listings. Therefore, disability has not been established under Step 3, and the sequential evaluation must continue in Steps 4 and 5.

Steps #4 and #5: Residual functional capacity for past work/any other work

The undisputed medical evidence shows that the claimant could not perform any work, including her past work and any other work as already discussed above. 20 CFR 416.920(e) and (f).

Therefore, Steps 4 and 5 have been established in claimant's favor.

This ALJ has been persuaded by the preponderance of the medical evidence that disability has been established.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that physical disability has been established.

Accordingly, the Medicaid denial is REVERSED.

Medical Review suggested in April 2010.

/s/ _____
William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 21, 2009

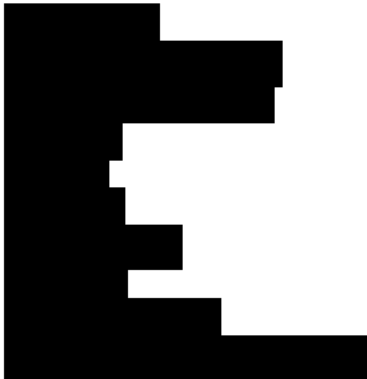
Date Mailed: May 21, 2009

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 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.

WAS/tg

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