

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 200929219
Issue No. 2009
Case No. [REDACTED]
Hearing Date: September 3, 2009
Ogemaw 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on September 3, 2009. Claimant personally appeared.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-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, 55-year-old former nicotine abuser (quit in 2009) with a GED, who became a certified licensed practical nurse in 2005 (Department Exhibit #1, pgs 141-143).
2. Claimant is right hand dominant; she stands approximately 5'3" tall and weighs 120 pounds, per self report.
3. On February 20, 2009, claimant applied for disability-based MA/retro-MA secondary to medical expenses associated with a January 29, 2009 cervical decompression and fusion (See also Finding of Fact #7-#9 below).

4. If claimant's application had been approved her ongoing medical expenses would have been covered by MA.
5. When the department denied that application claimant filed a written hearing request dated June 8, 2009.
6. Claimant's hearing was held by conference telephone on September 3, 2009.
7. Claimant fell and landed on her back in August 2008; she has remained unemployed since then (Department Exhibit #1, pgs 82, 113 and 142).
8. Claimant's November 2008 cervical MRI scan verified a moderately large disc herniation at C5-C6 with spondylotic changes at C6-C7; consequently, surgical fusion/decompression was recommended (Department Exhibit #1, pgs 81 and 100).
9. Claimant underwent this procedure on January 29, 2009, after which she was placed in a cervical collar and taken to the recovery room in stable condition (Department Exhibit #1, pgs 75-76).
10. In early February (2/6/09), claimant's treating doctor prescribed [REDACTED] (an anti-anxiety medication) to calm her nerves and help her post-surgical sleep patterns (Department Exhibit #1, pgs 131-132).
11. Claimant's March 2, 2009 post-surgical progress report indicates she was doing well; consequently, her neurosurgeon advised slow weaning from the surgical collar in three weeks (Department Exhibit #1, pg 68).
12. Claimant also participated in physical therapy between May and July 2009 (Client Exhibit A, pgs 14-54).
13. Six months post-surgery, at the close of claimant's physical therapy, her self-assessment stated she was still having moderate pain and a fair degree of difficulty concentrating/sleeping (Client Exhibit A, pg 31)(See also Finding of Fact #10 above).
14. Intermittent headaches are verified by claimant's physical therapy progress report dated June 16, 2009 (Client Exhibit A, pg 20).

15. An August 14, 2009 note from claimant's treating doctor diagnoses her with Benign Paroxysmal Positional Vertigo (BPPV)(Client Exhibit A, pg 3).
16. Claimant supplemented proof of this diagnosis with Internet research from the [REDACTED] which states that BPPV is bothersome but rarely serious except when it increases the chance of falls; primary characteristics are listed as brief episodes of mild to intense dizziness associated with specific changes in the position of an individual's head, fully capable of effective treatment (Client Exhibit A, pg 4).
17. Claimant has never been involved in any substance abuse or mental health treatment or counseling, per self report.
18. Claimant's only other documented physical ailments are emphysema and hypothyroidism, currently under adequate control with prescription inhalers ([REDACTED]) and hormone replacement medication ([REDACTED])(Department Exhibit #1, pgs 82 and 100).
19. Also, claimant reported at hearing [REDACTED] was still being prescribed for pain management (Department Exhibit #1, pg 142).

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.

(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).

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 August 2008.

At Step 2, claimant's diagnosed physical impairments (hypothyroidism/emphysema/post-surgical cervical fusion residuals) have left her with some range-of-motion limitations, pain and shortness-of-breath symptoms. However, it must be noted no additional physical impairments are documented by the evidence of record, and no severe mental impairments have been shown. Furthermore, all claimant's conditions appear fully capable of adequate management with current prescription medications.

Likewise, 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 conditions meet 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 diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention she is incapable of returning to direct patient care (LPN), as that job requires extensive lifting, walking, bending, carrying, etc. which could exacerbate claimant's pain levels or cause additional injury. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 55-year-old individual with post-secondary education and a skilled/semi-skilled 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 at least sedentary work. As such, a finding of not disabled must be rendered in accordance with Medical-Vocational Rule 201.15.

Claimant's biggest barriers to employability appear to be her displacement from nursing work, in combination with her lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with her skills, interests and abilities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's February 20, 2009 MA/retro-MA application.

Accordingly, the department's action is AFFIRMED.

/s/
Marlene B. Magyar
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 21, 2011

Date Mailed: March 21, 2011

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

cc:

