

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: 2009-31906  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 15, 2009  
Allegan 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, a telephone hearing was held on September 15, 2009. Claimant personally appeared and testified.

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 married, 48-year-old high school graduate with an Associates Degree in Computerized Accounting who stands 5'6" tall and is medically obese at 230 pounds (BMI=37.1); she is right hand dominant.

(2) Claimant got laid-off from her skilled position as a computerized numeric controller (machinist) in 2005 and she has remained unemployed since then (Department Exhibit #1, pg 19).

(3) Claimant has an extensive alcohol abuse history but she testified to complete remission from alcohol use since December 2008; she was diagnosed with cirrhosis of the liver secondary to alcoholism during a two day hospitalization in January 2009 (Department Exhibit #1, pgs 41 and 42).

(4) Claimant was found to have cellulitis in her left lower extremity at admission; consequently, she was treated conservatively with antibiotics, gentle hydration and rest (Department Exhibit #1, pg 41).

(5) During this January 2009 hospitalization claimant was counseled about alcohol and tobacco cessation (Department Exhibit #1, pgs 34 and 41).

(6) On the day of discharge, claimant was doing extremely well; the redness and swelling of her left lower extremity had diminished significantly and she had no fevers or abdominal complaints (Department Exhibit #1, pg 41).

(7) One month earlier (December 2008) claimant spent three days in the hospital reporting feeling weak, nauseous, coughing, shortness of breath and pleuritic chest pain (Department Exhibit #1, pg 30).

(8) Claimant's chest x-ray revealed possible early right side pneumonia; she was treated conservatively and by the time of discharge her respiratory status improved to where she was without any cardiopulmonary complaints; her pulse ox was in the 90s at rest and with exertion (Department Exhibit #1, pg 30).

(9) Claimant has a valid driver's license and she is independent in self cares and basic daily living activities (Department Exhibit #1, pgs 21 and 22).

(10) Claimant has never been involved in any mental health treatment or counseling nor has she ever been psychiatrically hospitalized.

(11) An independent psychological evaluation conducted on July 21, 2009 revealed claimant was fully oriented and had good judgment (Department Exhibit #2, pgs 1-7).

(12) Claimant's Global Assessment Function (GAF) was assessed at 65 (normal) and the examining psychiatrist concluded she was capable of understanding, remembering and carrying out instructions and making decisions regarding work-related matters, but she may have mild difficulty interacting appropriately with others in public or with coworkers/supervisors in the work place due to her chronic depression (Department Exhibit #2, pg 6).

(13) On July 25, 2009, claimant underwent an independent physical examination.

(14) Claimant walked with a normal gait using no assistive devices and she exhibited no lower extremity joint instability, enlargement or effusion (Department Exhibit #2, pg 10).

(15) Claimant's bilateral upper extremity dexterity was unimpaired and grip testing via dynamometer revealed she has the capacity to grip 46 pounds with her right hand and 49 pounds with her left hand (mildly diminished grip)(Department Exhibit #1, pg 10).

(16) Claimant's bilateral upper extremity range of motion was noted to be normal (Department Exhibit #1, pg 10).

(17) Claimant told the independent examiner in July 2009 she was still consuming two beers daily (Department Exhibit #1, pg 9)(See also Finding of Fact #3 above).

(18) Claimant's medical history is positive for left carpal tunnel release surgery in 2005 (Department Exhibit #2, pg 6).

(19) At hearing on September 15, 2009, claimant reported a host of various symptoms across multiple body systems including bilateral leg, arm and wrist pain, debilitating back aches, stomach aches, chronic shortness of breath, memory problems, etc.

(20) Claimant currently takes no prescription medications although she reports periodically using her husband's nebulizer to treat her self-reported shortness of breath, not uncommon for person with her extensive tobacco abuse history (Department Exhibit #2, pg 8).

(21) On August 20, 2009, the department's State Hearing Review Team (SHRT) issued the following recommendation:

The claimant has a history of alcohol abuse and cirrhosis. Her liver enzymes did not meet program severity and did improve after treatment. She had decreased breath sounds but lungs were clear. Her mental status was unremarkable.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled light work. In lieu of a detailed work history, the claimant will be returned to other work (Department Exhibit #3).

### 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.

...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 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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we

can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

**Skilled work.** Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity. 20 CFR 416.968(c).

[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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA disability coverage she seeks because she has not presented any objective medical records to establish the presence of a physical or mental



condition supportive of a basis for her severe, chronic, pervasive and debilitating pain complaints or allegedly severe mental/emotional restrictions.

Claimant is fully independent in self cares and basic daily living activities. She takes no prescription medications. Likewise, neither her independent psychological or physical evaluations (conducted in July 2009) reveal any severe abnormalities. Furthermore, it must be noted 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. The evidence of record establishes alcohol and tobacco cessation have been repeatedly recommended because these lifestyle changes can reasonably be expected to improve claimant's reported shortness of breath symptoms and to stabilize the secondary symptoms associated with her ongoing cirrhosis which generally results in periodic, brief hospitalizations for conservative treatment.

As such, this Administrative Law Judge concludes claimant is fully capable of performing substantial gainful employment in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Therefore, claimant's March 12, 2009 MA 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 eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/  
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Marlene B. Magyar  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: September 16, 2009

Date Mailed: September 17, 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

cc:

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