

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: 2009-33272
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 12, 2009
Eaton 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 November 12, 2009. Claimant and her mother personally appeared and testified. She was assisted by [REDACTED]

ISSUE

Did the department properly deny claimant's January 13, 2009 Medicaid (MA)/retro-MA application based on a finding she lacks a legally disabling condition?

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, 42-year-old, three pack per week smoker with a general equivalency diploma (GED) who stands approximately 5'2" tall and weighs approximately 140 pounds; she is left hand dominant, per self report (Department Exhibit #2, pg 2).

(2) Claimant had an unskilled employment history in factory work (general assembly), janitorial work and cashiering, but she left her most recent cashier's job in April 2008 and she has remained unemployed since then.

(3) On January 13, 2009, claimant's authorized representative filed an MA/retro-MA application on her behalf.

(4) When that application was denied, claimant's authorized representative filed an appeal.

(5) Claimant's hearing was held on November 12, 2009.

(6) Claimant is a chronically anemic, noninsulin dependent diabetic (since 2007) with high blood pressure and high cholesterol who has a long history of medical noncompliance secondary to lack of funds (Department Exhibit #1, pgs 70-71, 88, 101, 104 and 111; Department Exhibit #2, pg 1).

(7) In January 2009, claimant was transfused with two units of packed blood cells in the Emergency Room (ER) because of an extremely low hemoglobin level (6.3); she was discharged home in stable condition with an iron supplement and an antibiotic for possible early pneumonitis, in addition to her other ongoing prescription medications (Department Exhibit #1, pgs 11, 59, 60 and 63).

(8) One month earlier (12/08), claimant was diagnosed with new onset congestive heart failure and peripheral vascular disease (Department Exhibit #1, pg 15; Client Exhibit C, pg 1).

(9) A form completed by claimant's treating cardiologist on December 4, 2008, assesses her with Class III/D cardiac disease (Client Exhibit B, pg 27).

(10) On March 26, 2009, claimant's treating cardiologist provided this relevant summary regarding her condition:

[Claimant] has severe peripheral vascular disease. CT angiogram demonstrated multi-level occlusion including aortic, iliac and superficial femoral arteries. [Claimant] was to receive a percutaneous repair when it was discovered that she was profoundly anemic. She has since received a hematology workup which has been non-revealing. Several weeks after receiving two units of blood, she now has a normal blood count and returns for her percutaneous therapy. [Claimant] is to go ahead with her procedure sometime next week (Client Exhibit C, pg 8).

(11) Claimant was hospitalized at least once each month between April and September 2009, except in July 2009 (Client Exhibit A, pgs 1-12 and Client Exhibit B, pgs 1-36).

(12) On April 14, 2009, two stents were placed in an effort to improve the vascular flow in claimant's right lower extremity stemming from her severe peripheral and central vascular disease (Client Exhibit B, pgs 1 and 2)(See also Finding of Fact #10 above).

(13) In May 2009, claimant was admitted for an acute exacerbation of congestive heart failure (Client Exhibit B, pgs 3-10).

(14) By that time, claimant's anemia had returned with an admission hemoglobin level around 8.0 (Client Exhibit B, pg 11).

(15) In May 2009, claimant also was diagnosed with pulmonary fibrosis (ongoing), chronic diastolic heart failure, mild renal insufficiency, uncontrolled diabetes complicated by peripheral vascular disease, and uncontrolled hypothyroidism with a TSH of 16.38 (Client Exhibit B, pgs 3 and 11).

(16) In June 2009, claimant's chronic breathing problems required emergency hospital treatment, and in August 2009 she suffered a non-ST-elevation myocardial infarction (heart attack)(Client Exhibit A, pgs 1-4).

(17) Claimant's August 25, 2009 cardiac catheterization results revealed 80%-90% blockages in the left circumflex artery and the RCA which required cardiac by-pass grafting x 4 on September 4, 2009 (Client Exhibit A, pg 4).

(18) Claimant spent a few days in the critical care unit post-op and she was discharged home in stable condition on September 11, 2009 (Client Exhibit A, pgs 4 and 5).

(19) Claimant's ongoing symptoms include chronic shortness-of-breath on minimal exertion, periodic dizziness and chest pain, poor vision, bilateral lower extremity pain and general fatigue.

(20) During an independent physical examination conducted on July 6, 2009, claimant exhibited a mild left-sided limp, hypesthesia manifestations secondary to diabetes, significantly impaired visual acuity, coarse rales with frequent coughing while breathing punctuated by an occasional expiratory wheeze, and significantly compromised pulmonary function test results with minimal improvement post-bronchodilator ()Department Exhibit #2, pgs 1-5).

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.

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant has not been gainfully employed since 2008; consequently, the analysis must continue.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical limitations upon her ability to perform basic work activities.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant cannot return to her past relevant unskilled, light work because she is physically incapable of sustained gainful activity at that exertional level.

In the fifth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;

- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department improperly denied claimant's January 13, 2009 MA/retro-MA application because she is legally disabled under the governing rules.

Accordingly, the department's application denial is REVERSED, and it is Ordered that:

(1) The department shall process claimant's January 13, 2009 MA/retro-MA application and shall award all the benefits to which she may be entitled, as long as she meets the remaining financial and non-financial eligibility factors.

(2) The department shall review claimant's condition for improvement in March 2012, unless Social Security disability is approved by that time.

(3) The department shall obtain updated medical evidence from claimant's treating physician, specialists, hospitals, etc., regarding her treatment, progress and prognosis at review.

(4) The department also shall schedule claimant for an independent consultative physical examination at the time of review.

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

Date Signed: April 29, 2010

Date Mailed: April 30, 2010

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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