

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

IN THE MATTER:

[REDACTED]

Reg No. 200920584
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: June 24, 2009
Genesee 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, an in-person hearing was held on June 24, 2009. Claimant personally appeared and testified. She was represented by [REDACTED]

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 a material fact:

1. Claimant is a single, 54-year-old female with three years of post-secondary education ([REDACTED]), but no degrees or certifications beyond the high school level.
2. Claimant has an extensive history of receptionist and medical unit secretary work; however, she has not been employed since November 2007 when she left her most recent job to become primary caretaker for her critically ill mother.
3. Claimant's surgical history is positive for an uncomplicated total hysterectomy in [REDACTED] secondary to benign fibroid lesions;

consequently, she has been taking Estradelol (hormone replacement) since then (Department Exhibit 1, pgs. 27-39).

4. In [REDACTED], claimant spent two additional days in the hospital [REDACTED] for removal of a benign left kidney mass with partial removal of the kidney itself; she was discharged in good condition with all laboratory examinations in acceptable range (Department Exhibit 1, pgs. 11-12).
5. On October 14, 2008, claimant's authorized representative filed a disability-based application for medical assistance on claimant's behalf (MA/retro-MA).
6. If this application had been approved, the expenses associated with claimant's [REDACTED] hospitalizations would have been covered by MA/retro-MA.
7. When the department denied claimant's application her authorized representative filed a hearing request, held in the Genesee County DHS office on June 24, 2009.
8. Claimant stipulated on the record at hearing she has no severe mental impairments; furthermore, all the medical records submitted during claimant's appeal are consistent with her self-assessment (Department Exhibit 1, pgs. 1-102; Client Exhibit A, pgs. 1-2; Client Exhibit B, pgs. 1-4).
9. Claimant's only other documented medical conditions are asymptomatic hypothyroidism and a goiter for which daily Synthroid has been prescribed (Department Exhibit 1, pgs. 11 and 41).
10. Claimant lives alone; she is fully capable of performing most activities of daily living including driving, but she pays people to do her yard work and she refrains from heavy lifting during house cleaning activities due to a right shoulder injury which occurred in [REDACTED], per her hearing testimony.
11. On [REDACTED], claimant's treating doctor completed a Medical Examination Report (DHS-49) which indicates claimant has developed right shoulder tendonitis (Client Exhibit A, pg. 2).
12. Claimant stated at the hearing she takes prescription strength Motrin for pain management, and also, she was scheduled to begin physical therapy on her right shoulder the following week.
13. Claimant also has high blood pressure not uncommon for a 54 year old female of her weight and height (5' 2"/150 pounds); furthermore, this

condition is capable of adequate management with claimant's current prescription medications (Client Exhibit A, pg. 1; Client Exhibit B, pgs. 1-4).

14. The Medical Examination Report (DHS-49) which claimant's treating doctor completed in [REDACTED] (8 months after her MA/retro-MA application was filed) assesses claimant's overall health condition as stable and notes normal functioning of all body systems, but for trace bilateral lower extremity edema, secondary to non-critical venous insufficiency (Client Exhibit A, pgs. 1-2).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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.

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).

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 2007 (See Finding of Fact #2 above).

At Step 2, claimant's diagnosed physical impairments, in combination, have left her with some pain on excessive exertion and fatigue. However, it must be noted no severe mental impairments have been shown, and claimant's other existing symptoms appear fully capable of adequate management with the prescription medications currently in use.

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. While this Administrative Law Judge finds claimant's current prescription medications are capable of adequate symptom management, she finds claimant's combined impairments 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, claimant's medical records support a finding she is physically capable of returning to her former sedentary type work, or to any number of other sedentary jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed application most remain denied.

Claimant's biggest barrier to employability appears to be her lack of recent connection to the competitive workforce. Claimant should be referred to Michigan Rehabilitation Services (MRS) for assistance with job training and/or placement consistent with her skills, interests and abilities. Claimant should be aware that she may file another disability application at any time.

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 October 14, 2008 MA/retro-MA application based on a finding she was not disabled under the governing rules.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: November 24, 2010

Date Mailed: November 24, 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/vc

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