

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: 2009-23816
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 13, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 August 13 , 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her son [REDACTED] translator as well as claimant's son assisted during the hearing by translating for the claimant from [REDACTED] language and vice versa.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive MA?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On December 30, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On March 2, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 month per 20 CFR 416.909.

(3) On March 5, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 8, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating impairment lacks duration per 20 CFR 416.909.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On December 7, 2009 SHRT once again determined that claimant's impairment lacks duration of at least twelve months of a disabling condition. SHRT also stated that the claimant continues to retain the ability to perform light exertional tasks.

(7) Claimant is a 55 year old woman who is 5'3" tall and weighs 155 lbs. Claimant came to the U.S. in 2008 from [REDACTED] and did not go to school there, and cannot read, write or do basic math. Claimant also does not speak English.

(8) Claimant states she owned her own business in [REDACTED] selling rice, and has no other work history. Claimant is living with her son who takes care of her. Claimant has never had a driver's license, does not cook, grocery shop, or do any housework.

(8) Claimant alleges as disabling impairments: mitral valve regurgitation, aortic insufficiency, heart failure, and hypertension.

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 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

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 does 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).

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).

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).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and testified that she has not worked since coming to the U.S. in 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a

minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record shows that the claimant was admitted to the hospital in December, 2008 for cardiogenic shock secondary to aortic dissection. Claimant underwent aortic valve replacement, mitral valve replacement and PFO closure on January 5, 2009. Claimant returned to the hospital on February 19, 2009 with complaints of chest pain, and also apparently had a fever up to 101.3 degrees at home. Claimant underwent CT angio of the chest that showed a large pericardial effusion. Claimant's medical history includes hypertension, history of mitral regurgitation status post mitral valve replacement, history of aortic insufficiency, aortic root dissection status post aortic root replacement, closure of PFO, history of pulmonary edema on vent secondary to above, and history of MRSA pneumonia. At February 25, 2009 physical examination claimant's blood pressure was 134/110, respiratory rate 16, and pulse oximetry 98% on room air. Claimant was alert and in no acute distress, nontoxic appearing, her lungs were clear to auscultation bilaterally, and she had no edema on her extremities. CT angio showed a large pericardial effusion approximately 2.6 cm in diameter, but the doctor thought this may be old blood rather than new finding.

March 25, 2009 cardiologist follow-up exam indicates that the claimant has pneumonia. Claimant is now walking 45 minutes without stopping. Claimant denies any peripheral swelling, palpitations, lightheadedness, or chest discomfort with the exceptions that she has noticed some very slight hand swelling in the left upper extremity, but this does not bother her. Claimant also has some very mild discomfort in the chest tube sites when she yawns or takes a deep breath, otherwise they do not bother her. Claimant's constitutional cardiac and respiratory review of systems are otherwise unremarkable, and her appetite is good. Echocardiographic evaluation

showed that claimant's prosthetic aortic and mitral valves appear to be functioning well. There is a small mass seen in the sub mitral apparatus that appears to be related to the surgery and the sub mitral apparatus that was removed. Claimant's blood pressure was 147/86, her pulse 72 and regular, and respirations were 18 and non labored. Lung fields were clear to auscultation, no rales, rhonchi or wheezes noted. There was no pitting edema in the lower extremities, claimant's upper and lower extremity pulses were good, and her feet and hands were warm to touch. Impression was that of status post mitral and aortic valve replacements, claimant was doing well, and moderate pericardial effusion, not changed as compared from the reports from the hospital. Claimant was counseled on a regular exercise program and on signs and symptoms that would prompt a more emergent evaluation.

Claimant was seen for an evaluation by a cardio nurse on July 20, 2009. Claimant was feeling fairly well, but had complaints of left shoulder and arm pain which is exacerbated by movement. First thing in the morning claimant's arm is very tight and she has to use her right arm to help move her left arm until she gets it moving properly. Claimant had no chest pain, no shortness of breath, no edema, no dizziness, syncopal or near syncopal episodes. Claimant has been having her blood pressure checked at [REDACTED] occasionally and it has been about 140 to 150 systolic consistently. Physical exam revealed claimant's blood pressure at 160/120, clear lungs, regular heart rhythm and tones without murmur, extremities with no edema, and equal radial and pedal pulses. Claimant's pericardial effusion continues unchanged from last echocardiogram in February, 2009.

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. However, the claimant's impairment has not lasted 12 months or more, and most recent medical reports indicate that her condition is improving. Claimant would therefore have to be denied at Step 2 of the analysis due to lack of impairment duration.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where 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).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would not be able to make a determination if the claimant can do her past relevant work as she was self-employed rice salesman in [REDACTED], and the extent of physical exertion such a job would require is not known. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant is now 55 years of age and therefore an individual of advanced age under the federal guidelines. Claimant was described as frail looking during the hearing by department's representative. Claimant does not speak English and has no formal schooling according to the hearing testimony. This Administrative Law Judge is of the opinion that the claimant would be considered incapable of performing other work and therefore may meet disability criteria, were it not for the fact that her condition has not lasted 12 months, her condition as of July, 2009 medical exam had improved, and there is no evidence that her condition will result in death. If the claimant provides additional medical information in the future showing her heart condition has worsened, she may very well meet disability requirements.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. However, claimant does not meet the impairment duration requirement of 12 months, and therefore cannot be found disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical

Assistance, and retroactive Medical Assistance benefits. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 1, 2010

Date Mailed: April 5, 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 mailing 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.

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