

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

IN THE MATTER OF:

[REDACTED]

Reg No. 200925615
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 4, 2009
Bay 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 August 4, 2009. Claimant personally appeared and testified. She was assisted by [REDACTED], Attorney.

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, left-handed, younger individual (43) with an Associates Degree in General Studies; she resides with her significant other in [REDACTED].
2. Claimant has a sedentary, semi-skilled work history as a medical records clerk (performing analysis/scanning/audits) but she has not done that type of work since March 2007.
3. Initially, claimant took medical leave in [REDACTED] for repair and recuperation following outpatient surgery secondary to her right rotator cuff tear; she has remained unemployed since then.

4. Four years earlier [REDACTED] claimant was diagnosed with genetic Marfan's Syndrome; since then, she has been followed periodically at the Cleveland Clinic (Department Exhibit 1, pg. 8).
5. On November 10, 2008, claimant applied for disability-based medical coverage (MA/retro-MA).
6. When the department denied claimant's application she requested a hearing, held by conference telephone on August 4, 2009.
7. Claimant stands 5' 10" and is exogenously obese at 298 pounds, per self report (BMI=42.8).
8. On [REDACTED] (4 months post application filing), claimant underwent a sleep study which revealed she has no significant obstructive sleep apnea; however, claimant was noted to have restless leg syndrome (Department Exhibit 2, pg. 1).
9. A subsequent check-up, dated [REDACTED] (7 months post application filing), notes no significant interference in claimant's daily activities due to her restless leg syndrome (per self report); additionally, all claimant's other systems tested normally (See Progress Note, pg. 7).
10. On [REDACTED], claimant fell; subsequent right foot and ankle x-rays were negative, leading to an initial diagnosis of right ankle sprain (See [REDACTED]).
11. However, on [REDACTED], claimant underwent a right ankle MRI scan which revealed a full thickness tear of her anterior talofibular ligament and a partial thickness tear of her anterior inferior tibiofibular ligament of uncertain duration with extensive soft tissue swelling around the ankle (Client Exhibit A, pgs. 4 and 5).
12. Claimant's ability to stand and/or walk unassisted for any length of time is compromised due to continued right ankle pain and swelling despite her use of pain medications, anti-inflammatories and a water pill, as prescribed.
13. Claimant's surgical history is positive for a [REDACTED] aortic valve repair via grafting, which is not uncommon in Marfan's Syndrome patients; this condition appears stable on current prescription medications (See also Finding of Fact #4 above).

14. Claimant's longstanding family physician acknowledged a progressive decline in claimant's condition, stating as follows:

[Claimant] is my patient; she has a history of Marfan's Syndrome, and has had several fractures. I have treated her for fractures as well as severe problems with her knees. She is currently suffering from degenerative arthritis.

In her present condition I do not believe [claimant] is able to stand for any period of time, she also is not able to sit for long periods of time. She would need to be able to get up and move around or sit at will. She would probably require approximately 30 minute breaks several times a day (Client Exhibit A, pg. 3).

15. Additionally, claimant provided the following (more detailed) medical assessment of her overall condition at the disability hearing held on August 4, 2009:

[Claimant] is experiencing involvement of multiple body systems as a result of the Marfan syndrome which should be reflected in her medical records. She has cardiac involvement related to the Marfan syndrome and has undergone an aortic root repair, and is on a beta blocker. We would caution careful attention to the fact that the Marfan aorta is unstable and unpredictable, and there is the potential for life threatening complications at any time.

She reports having significant orthopedic problems related to the Marfan syndrome, which should also be indicated in her medical records. She has a rotator cuff injury, a torn ACL in her knee, and has fractured both feet. She has scoliosis and dural ectasia, and has intermittent back pain for which she takes anti-inflammatory medication.

[Claimant] advises that she suffers from major depression, which should also be reflected in her medical records, and is on anti-depressant medication. She advises that her psychiatrist recommended that she not work, as she reports that stress negatively impacts her cardiac functioning (Client Exhibit A, pg. 2).

16. Claimant maintains regular outpatient group counseling through the [REDACTED] additionally, she meets with a psychiatrist there monthly.
17. Despite claimant's current mental health regimen and full compliance with her prescribed medications (Prozac/Wellbutrin), claimant's non-exertional symptoms include chronic depression, insomnia, confusion, memory lapse, social isolation and generalized anxiety.

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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

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 is not working; 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 and mental limitations upon claimant's 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 and psychological findings, that claimant cannot return to her past relevant work because she simply is 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. Under these circumstances, the department erroneously denied claimant's November 10, 2008 MA/retro-MA application, and thus, that denial cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not legally disabled.

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

1. The department shall process claimant's disputed MA/retro-MA application, and shall award all benefits to which she may be entitled, as long as she meets the remaining financial and non-financial eligibility factors necessary to receive them.
2. The department shall review claimant's physical and mental conditions for improvement in January 2012, unless Social Security disability has been approved by that time.
3. The department shall obtain updated medical and physiological evidence from claimant's treating professionals regarding her progress and prognosis at review.

/s/_____

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

Date Signed: December 2, 2010

Date Mailed: December 2, 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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