

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: 2009-35698

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 5, 2009

Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 5, 2009.

ISSUE

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

FINDINGS OF FACT

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

(1) [REDACTED]. applied for Medical Assistance coverage for claimant on February 11, 2009 with retroactive Medical Assistance to November 2008.

(2) Medical records were sent to the Medical Review Team on April 10, 2009.

(3) On April 28, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(4) On April 30, 2009, the department caseworker sent claimant notice that her application was denied.

(5) On July 28, 2009, claimant's representative filed a request for a hearing to contest the department's negative action.

(6) On September 28, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(7) At the hearing, it was determined that claimant has been granted SSI benefits with a disability onset date of [REDACTED] based upon an application date of July 16, 2009.

(8) Claimant is a 60-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 165 pounds.

(9) Claimant's pertinent work history is as a homemaker.

(9) Claimant alleges as disabling impairments: coronary artery disease, heart failure, kidney failure, back pain, acid reflux disease, diabetes mellitus, and anemia.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

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).

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 has no pertinent work history. Claimant is not disqualified from receiving disability at Step 1.

Claimant had back surgery in [REDACTED], nerve and muscle damage in the right leg in [REDACTED], and alleged severe headaches in [REDACTED]. (p. 36) The objective medical evidence on the record indicates that claimant was hospitalized for renal failure in [REDACTED]. Claimant has adult onset insulin diabetes which is uncontrolled. On a medical report of [REDACTED] [REDACTED] claimant's blood pressure was 120/72 and she weighed 185.6 pounds. She was alert, well-developed and well-nourished. There were hypertrophic scars consistent with previous surgeries in her back. Claimant had a lumbar laminectomy in [REDACTED]. Claimant had a numb left leg and the right leg EMG showed S1 nerve root irritation. She had subacromial bursa tenderness. Claimant also had rotting teeth. Claimant had normal respiratory effort. Her respiratory was normal to auscultation and was clear to percussion. In the cardiovascular she had no thrills, lifts, or palpable S3 or S4. She had regular rate and rhythm with no murmurs, gallops, or rubs or abnormal heart sounds. On [REDACTED] claimant was determined to have anemia which was worsening and diverticulosis with a hemorrhage as well as an abscess tooth. On [REDACTED] [REDACTED], claimant had rotting teeth and had been having bleeding from the left side of the nose. Her blood sugars were uncontrolled. She weighed 183.8 pounds. She was alert, well-developed, well-nourished and had normal respiratory effort. Her respiratory was normal to auscultation and

clear to percussion. Her cardiovascular had no thrills, lifts, or palpable S3 or S4. Regular rate and rhythm with no murmurs, gallops, rubs, or abnormal heart sounds. Her blood pressure was 116/74. On [REDACTED], claimant's diabetes type 2 adult onset was uncontrolled. She was alert, well-developed, and weighed 181.5 pounds. Her blood pressure was 122/72 and her anemia was worsening. Her blood pressure was 142/82 and she weighed 180.8 pounds. She was alert, well-developed, and well-nourished.

On [REDACTED], claimant was admitted with complaints of dizziness, chills, and no urine output. In the Emergency Room she was found to be hypoglycemic with a blood sugar of 39. She was given an amp of D50 and started with IV hydration. Lab work showed potassium of 5.1 with a BUN of 73 and a creatine of 8.6. She admitted to the hospital with IV hydration. She was taken off all antihypertensives and hypoglycemic medication. Nephrology was consulted. Potassium was normal after receiving Kayexalate. After aggressive hydration, claimant's kidney function did not improve. Vascular surgery was consulted and she had an Ash catheter placed and following that she underwent one hemodialysis. Following that she started to make urine and urine output became adequate. Urine culture came back positive for E. coli with multiple sensitivities. Claimant was found to be anemic. Gastroenterology was consulted. She did get transfused during the hospitalization and was started on supplementation. Her vital signs on the day of discharge were: blood pressure 140/70, pulse was 70, respiratory rate was 20, pulse oxygen was 95% on room air, and temperature was 99.4. Her chest was clear. No wheeze or rales. Heart was regular. Abdomen was obese, soft, and non-tender. Extremities had trace edema bilateral. Her Accu-Chek was 137. Claimant was assessed with acute renal failure, hypertension, type 2 diabetes, dyslipidemia, and hyperkalemia. (p. 138)

At Step 2, the objective medical evidence on the record indicates that claimant has established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more. Claimant is not disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, the Administrative Law Judge finds that claimant can no longer perform her prior work and is not disqualified from receiving disability at Step 4.

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 some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity. Claimant is eligible to receive SSI benefits accordingly to the Social Security Administration as of [REDACTED] based upon her application of July 2009. This Administrative Law Judge is charged with determining whether or not claimant was disabled for the month of November 2008 through July 2009.

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).

This Administrative Law Judge finds that based upon the objective medical evidence in the file, claimant could probably perform light work even with her impairments. However, based upon the claimant's advanced age and a high school graduate with unskilled work, claimant is disabled pursuant to Medical-Vocational Rule 202.04.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, p. 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work

for a period exceeding 90 days, the claimant does meet the disability criteria for State Disability Assistance benefits.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established on the record that she is disabled for purposes of Medical Assistance and State Disability Assistance benefits as well as retroactive Medical Assistance benefits.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's Medical Assistance and State Disability Assistance application. The Medical Assistance benefit application should be reinstated to the November 2008 retroactive Medical Assistance date. The department shall determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 1, 2010

Date Mailed: February 1, 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.

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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.

LYL/vmc

cc:

