

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: 2009-35704
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 20, 2009
Saginaw 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 October 20, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retro MA, 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) On April 14, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 23, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On July 23, 2009, the department caseworker sent claimant notice that her application was denied.

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

(5) On September 28, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating she is capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational rule 202.21.

(6) Claimant submitted additional medical evidence following the hearing which was forwarded to SHRT for review. On October 26, 2009, SHRT again denied claimant's application stating she was capable of sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.27.

(7) Claimant is a 25 year-old woman who is 5'7" tall and weighs 165 pounds. Claimant completed high school and 3 years of college and is a pharmacy technician.

(8) Claimant works for [REDACTED] but is currently on leave of absence with last day of work being March 19, 2009. Claimant became ill with heart issues and had to stop working.

(9) Claimant alleges as disabling impairment congenital heart defect with complications. Claimant was born with heart defects and had her first heart surgery at the age of 9 weeks, was on medications until the age of 3, then started having problems again at the age of 11, and was well again until this year.

(10) Claimant has applied for SSI in April, 2009 and been denied, and is appealing this decision.

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 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).

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 March 19, 2009. 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 includes a [REDACTED], hospital report for an emergency admission. The report describes the claimant as having a history of congenital heart defect, a tricuspid atresia (a rare form of congenital heart disease in which there is no communication between the right atrium and the right ventricle), and status post Fontan procedure as a child who presented complaining of palpitations in her chest. Claimant stated that about 12 years ago she was diagnosed with atrial fibrillation and underwent cardioversion. Since then she has been on medications that had controlled her symptoms, but about 5 days ago she developed palpitations in her chest which became constant. EKG revealed that the claimant was clearly in atrial flutter. Claimant was transferred to University of Michigan Pediatric Cardiology Department for appropriate care.

Claimant was again in the emergency room on [REDACTED], with irregular heartbeat. It was noted that the claimant was recently treated at [REDACTED] after her February, 2009 episode. Claimant stated she had developed some palpitations and chest discomforts at work the day before. The claimant was examined by a cardiologist and he wanted to see her back in the office in 1 week. Claimant remained in normal sinus rhythm and since she was stable otherwise, she will be discharged to home. A counselor discussed insurance coverage and billing with the claimant because she would likely need a stress test and possible cardiac catheterization in the future.

On [REDACTED], claimant was in the emergency room with complaints of chest pain and shortness of breath which was severe. On physical examination claimant is in marked distress and extremely short of breath, and has periorbital and peripheral cyanosis, which is marked especially in the hands and feet. Claimant is extremely ill appearing. Claimant's diagnosis is that of acute respiratory failure, acute bilateral pulmonary embolism, acute hypoxia, and history of congenital heart disease status post Fontan procedure. Claimant was intubated on the ventilator with hypotension noted as well, placed on dopamine, and transferred to intensive care unit. Claimant was assessed with acute respiratory failure secondary to pulmonary emboli superimposed on underlying severe heart disease, post Fontan procedure and severe hypoxemia and hypotension. Left femoral central line operation was performed due to blood pressure instability. Thrombectomy of pulmonary embolism was performed.

[REDACTED] Final Document describing admission date of March 20, 2009, and discharge date of [REDACTED], lists as principal diagnosis from current hospital stay tricuspid atresia, atrial flutter, and saddle pulmonary emboli, and as secondary diagnosis severe deconditioning, right foot drop, poor oral intake, and hypoxic brain injury. A cardioversion was performed.

Physical Therapy Initial Evaluation of [REDACTED], indicates that the claimant presents with a right foot drop, decreased balance, decreased ambulation, and increased pain from dorsal aspect of the right foot to halfway up right shin during static standing, secondary to thrombectomy of pulmonary embolism of [REDACTED]. Mechanism of impairment was due to nerve damage following thrombectomy.

Additional medical information submitted following the hearing includes a [REDACTED]

[REDACTED] Final Document for a hospital visit date [REDACTED] Claimant had an ablation on

██████████ which was successful, but the procedure was complicated by tachycardia which could not be successfully ablated, and progressed to atrial fibrillation requiring cardioversion at the end of the study. Since her ablation the claimant has had no episodes of palpitations, but still gets tired relatively quickly and her leg bothers her intermittently. Claimant feels that she is approximately 70% recovered and has been discharged from physical therapy. Claimant has had multiple drug intolerances as different drugs give her edema and rash, neurologic changes, GI distress and hives. Claimant's heart rate is 66 and blood pressure 96/66, she is well appearing and in no acute distress. Claimant has recurrent atrial flutter successfully ablated, but with an episode of atrial tachycardia leading to atrial fibrillation during the procedure. Given claimant's history of rhythm issues, it is felt that she would be a good candidate to consider Fontan revision in the future. Recommendations are that the claimant continues cardiac care with her doctor.

Holter report of ██████████, indicates that claimant had frequent premature atrial beats and will be continued on the same medication regimen.

Letter dated ██████████, from ██████████ doctor states that the claimant has an extensive history of congenital heart disease, that she sustained a massive pulmonary embolism complete with respiratory failure and pulmonary hypertension during a recent hospitalization, and that pulmonary hypertension is an ominous finding in a patient with a history of Fontan surgery, as it significantly affects cardiac output.

On ██████████, claimant was seen at ██████████. Claimant appears to be doing very well clinically at the present time. Recent Holter revealed short runs of atrial tachycardia so claimant's medication has been increased, and she has been symptom-free since that time. Claimant's Holter will be rechecked and she will continue on the same medications. The possibility of Fontan revision was discussed given claimant's massive

Fontan connection. Claimant is agreeable to start the process by obtaining a cardiac catheterization for further evaluation of her Fontan physiology, and this procedure will be scheduled at the [REDACTED] in the following few weeks.

[REDACTED], letter from claimant's family physician states that currently her physical activity is limited due to the recent history of pulmonary emboli and her cardiac condition with a history of atrial fibrillation and status post ablation. Claimant will need to have a cardiac cath in the near future to reevaluate the Fontan procedure, probably revision. At this point her limitations for the ability to work are limited by her cardiac condition more than her foot drop.

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. While the claimant may be doing well for right now, her heart condition continues and has not been resolved, with need for further treatment. Claimant has a congenital heart condition that has lasted and expected to last for a period of 12 months or more. For these reasons, this Administrative Law Judge finds that claimant has met her evidentiary burden of proof at Step 2.

The analysis proceeds 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 support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, that of Section 4.00, Cardiovascular System. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed.

In conclusion, the clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

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, page 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 also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA, retro MA and SDA application.

Accordingly, department's decision is REVERSED. Department shall:

1. Process claimant's disputed April 14, 2009, application and grant her any MA, retro MA and SDA benefits she is entitled to receive (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant in writing of this determination.
3. If the claimant is approved for MA and SDA benefits, perform a medical review of claimant's case in January, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

/s/

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

Date Signed: November 10, 2009

Date Mailed: November 16, 2009

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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