

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.: 2009-4347
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 1, 2009
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 hearing was conducted from Clinton Township, Michigan on Monday, June 1, 2009. The Claimant appeared and testified by telephone. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department. At the Claimant's request, the record was extended in order for additional medical records to be submitted.

The additional records were received, reviewed, and entered as Claimant Exhibit A. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P benefits on January 10, 2008. (Exhibit 1, p. 2246-53)
2. On May 8, 2008, the Claimant submitted another public assistance application.
3. On May 19, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled.
4. The Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled.
5. On June 23, 2008, the Department received the Claimant’s written Request for Hearing.
6. On July 21, 2008, the MRT deferred the disability determination in order to schedule an internist and psychiatric examination for the Claimant. (Exhibit 1, p. 2233-35; 2238-41)
7. The Claimant attended the internist examination. (Exhibit 1, pp. 2237-38)
8. On October 24, 2008, the MRT found the Claimant not disabled and capable of performing other work. (Exhibit 1, pp. 2278-79)
9. On November 19, 2008, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
10. The Claimant’s alleged disabling physical impairments are due to degenerative disc disease, left leg nerve damage, arthritis, crohn’s disease, weight loss, and pain.
11. The Claimant’s alleged mental disabling impairments are due to depression.
12. At the time of the hearing, the Claimant was 47 years old; was 4’11” in height; and weighed under 100 pounds.
13. The Claimant has a limited education and a work history as a bartender, cashier, waitress, and hostess.
14. The Claimant’s impairment(s) lasted continuously for a period longer than 12 months.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

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) 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

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 applicants 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 limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in a substantial gainful activity this is not ineligible for receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely

from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the record presented, the case file was incomplete as evident by Exhibit 1 commencing at page 2,228.

On [REDACTED], the Claimant was admitted to the hospital with complaints of increased right-side flank pain, foul odor in her urine, and a temperature with chills. The Claimant was aggressively treated with IV Zosyn for 4 days. The CT scan documented kidney function bilaterally without acute process identified; definitive evidence of abscess; multiple prior surgeries with absence of the gallbladder and uterus, prior small bowel surgery and calcification with the vascular structures of the iliac vessels; and possible inflammatory process of the right kidney. Chest w-rays found mild cardiomegaly and increased lung volume. On [REDACTED] [REDACTED], the Claimant was discharged with the principal diagnoses of acute E. coli pyelonephritis with sepsis with fever and right flank pain.

Based upon a Facility Admission Notice, the Claimant was hospitalized from [REDACTED] [REDACTED] through the [REDACTED] [REDACTED] for right flank pain.

On [REDACTED], the Claimant was hospitalized for an exacerbation of Crohn's disease. Surgical intervention was not necessary so the Claimant was treated with medication, to include pain management, and discharged on [REDACTED].

On [REDACTED], the Claimant was admitted to the hospital for exacerbation of Crohn's disease and a multi-drug resistant urinary tract infection. Possible drug seeking behavior was noted as well as the Claimant's frequent hospitalizations for drug abuse and recurrent drug

seeking behavior. “She has been fully worked up for her abd (abdominal) pain many times and recurrently returns for more narcotics and will routinely leave ama (against medical advice) when she no longer receives her drugs. She should not be allowed to leave with peripheral access.” The Claimant was discharged on or about [REDACTED].

The Claimant was hospitalized on [REDACTED] due to nausea, vomiting, diarrhea, and right flank pain. The CT scan found mild stranding of the fat around the ascending colon and transverse colon raising the question of inflammatory disease.

On [REDACTED], the Claimant attended a department ordered evaluation. The physical examination listed the Claimant’s height as 5’2” and weight at 240 pounds. The straight leg raise was 90 degrees on both sides with no complaints of pain. The Claimant was unable to squat more than 50% due to pain in the lower back. The final page(s) were not presented.

On [REDACTED], the Claimant was admitted to the hospital with complaints of severe right flank pain, fever, and urinary tract infection. A CT scan revealed pyelonephritis. The Claimant was discharged on [REDACTED] with the diagnoses of right pyelonephritis; severe right upper quadrant pain; nausea and vomiting; Crohn’s disease; hypertension; hypotension; hypokalemia; and dehydration.

On [REDACTED], the Claimant presented to the hospital with recurrent episodes of abdominal pain associated with diarrhea along with a persistent urinary tract infection with E-coli over the past year. A sigmoid colectomy was performed which, post-operative, was complicated by wound cellulitis and edema. The Claimant was discharged on [REDACTED].

On [REDACTED], the Claimant was admitted with persistent diarrhea, weakness, and abdominal pain. Intravenous fluids were given. The Claimant was discharged on [REDACTED].

On [REDACTED], the Claimant presented to the hospital with complaints of passing air through her vagina and right side flank pain. The physical examination revealed tenderness on her right side and arrangements were made to transfer the Claimant to another hospital for specialty care of cardiology, infectious disease, and gastroenterology. The discharge diagnoses at transfer were right pyelonephritis secondary to e-coli pathogen; bacteremia with suspected endocarditis; sigmoid colectomy on [REDACTED] [REDACTED] for suspected colovesical fistula with postoperative wound cellulitis; anemia; hematochezia/diarrhea; and MediPort from her left chest.

On [REDACTED], the Claimant was transferred and admitted to another hospital with pyelonephritis sepsis and suspected endocarditis as previously arranged. A transesophageal echocardiogram was performed as well as surgical repair of an anastomotic leak. The Claimant was discharged on [REDACTED] with the discharge diagnoses of Crohn's disease, status post ileal resection; post sigmoid colectomy secondary to colovesical fistula; pyelonephritis; sepsis; anemia; borderline malnutrition; and history of peptic ulcer disease and colon polyps. The Claimant was restricted from lifting no more than 15 pounds.

The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In this case, the Claimant presented medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. The medical evidence established that the Claimant has an impairment, or combination thereof, that had more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairment(s) have lasted continuously for twelve months. Therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis 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. The Claimant has alleged disabling impairments due to seizures, psychological disorders/depression, and chronic arm pain. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 Digestive disorders are severe if it prevents an individual from doing any gainful activity. 5.00I1 If an impairment does not meet a listing, a determination of whether the impairment(s) medically equals a listing is made. 5.00I2

Listing 5.06 discusses inflammatory bowel diseases which must be documented by an endoscopy, biopsy, or other appropriate medically acceptable imaging, or operative findings with:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period.

OR

B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or

2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or
6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

Listing 5.07 defines short bowel syndrome due to surgical resection of more than ½ of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter. Weight loss due to any disorder meets Listing 5.08 if medical records document adherence to prescribed treatment with a Body Mass Index of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

In this case, the Claimant has received regular, ongoing treatment for diarrhea, nausea, vomiting, bowel resection, pain, and infection. Since the date of application, the Claimant has been treated in the emergency room and/or on an inpatient basis over 25 times receiving nutrition and antibiotics intravenously with continued weight loss and anemia. Ultimately, based upon the hearing record, it is found that the Claimant's impairment(s) meets, or are the medical equivalent, of Listing 5.06. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the January 10, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.
3. The Department shall supplement the Claimant for any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in August of 2010 in accordance with department policy.

/s/
Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/14/09

Date Mailed: 07/14/09

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 the Circuit 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.

CMM/jlg

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