

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: 2009-4398
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 2009
Berrien 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 claimant's request for a hearing. After due notice, an in-person hearing was held on March 31, 2009. Claimant and her boyfriend personally appeared and testified. She was assisted by [REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) eligibility standards?

FINDINGS OF FACT

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

(1) Claimant is a 51-year-old smoker (1/2 pack per day) whose divorce was final in March 2008; she currently resides with her boyfriend and her adult daughter in [REDACTED],
[REDACTED]

(2) Claimant previously resided in [REDACTED] and worked in a variety of unskilled jobs there, which is consistent with her limited, Special Education history (through 8th grade only) (Department Exhibit #1, pg 36).

(3) Claimant moved back to [REDACTED] in June 2005; she has remained unemployed since then.

(4) On June 26, 2008, the department received claimant's disability-based MA/retro-MA application.

(5) If this application had been approved, the medical expenses associated with claimant's March and April 2008 hospitalizations (3/18/08-3/27/08; 4/1/08-4/9/08) would have been covered by MA/retro-MA.

(6) When this application was denied, claimant's Authorized Hearing Representative and third party liability specialist ([REDACTED]) filed a timely hearing request on her behalf.

(7) Claimant's hearing was held on March 31, 2009.

(8) Claimant stated at the hearing she was not engaged in any mental health or substance abuse counseling and no mental or emotional impairments are evidenced by the medical records submitted to date.

(9) Additionally, claimant was not taking any prescription medications as of her hearing date, that being nine months after her disputed MA/retro-MA application was filed.

(10) Claimant professed a variety of pervasive pain complaints at the hearing (e. g., head/back/legs/hands/feet) and stated she uses over-the-counter medication [REDACTED] for pain management; no other prescription medications were noted.

(11) Claimant's March and April 2008 hospitalizations were related to newly diagnosed Idiopathic Thrombocytopenic Purpura (ITP)(Department Exhibit #1, pgs 15-28).

(12) During claimant's March 2008 hospitalization she was started on [REDACTED] based on high blood sugar readings secondary to her treatment, but once that treatment stopped claimant's levels normalized and she is no longer diabetic; likewise, claimant's high blood pressure readings also resolved post-hospitalization, according to an independent physical examination report dated November 22, 2008 (Client Exhibit A, pg 1)(See also Finding of Fact #9 above).

(13) The remainder of this independent physical examination report (conducted 5 months after claimant's disputed application was filed) is essentially normal, except for claimant's self-reported discomfort in several joints (Client Exhibit A, pgs 1-4).

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).

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

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and

laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of

a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. This Administrative Law Judge finds claimant's current over-the-counter medication is fully capable of adequate symptom management, given the

objective medical evidence presented. Furthermore, this Administrative Law Judge finds claimant's complaints of constant, pervasive, debilitating pain are disproportionate to the objective medical evidence contained within this record as it relates to claimant's ability to perform basic work activities.

Put simply, claimant does not qualify for the MA/retro-MA disability coverage she seeks because neither she nor her Authorized Hearing Representative has established the existence of a medically severe condition, or combination of conditions, which would prevent claimant from engaging in any number of simple, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed application must remain denied in concurrence with the department's State Hearing Review Team (SHRT) decisions dated November 20, 2008 and May 27, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's June 26, 2008 MA/retro-MA application.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 2, 2010

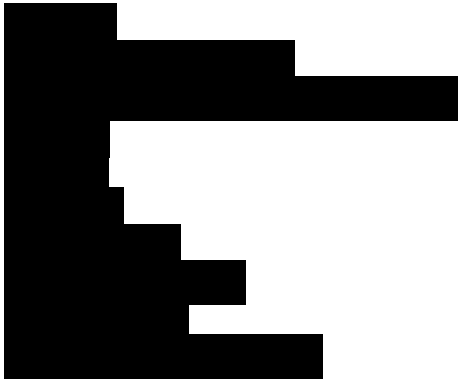
Date Mailed: March 3, 2010

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 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.

MBM/db

cc:

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