

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: 2009-5844

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 19, 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, a telephone hearing was held on March 19, 2009. Claimant personally appeared and testified.

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 single, 48-year-old high school graduate with a valid driver's license and access to a roadworthy vehicle; she lives independently in [REDACTED]
- (2) On September 11, 2008, claimant applied for disability-based MA.

(3) On October 23, 2008, the department issued a written denial notice to claimant; consequently, she filed a timely hearing request to dispute the issue.

(4) Claimant's hearing was held on March 19, 2009.

(5) Claimant alleges she is disabled due to pervasive pain complaints across multiple body areas, classified as "chronic myalgias" by treating doctors (Department Exhibit #1, pg 40; Medical Needs Form (DHS-54A) dated March 18, 2009, pg 1).

(6) Claimant stands 5'9" tall and is medically obese at 209 pounds (BMI=30.9); she is right hand dominant (Medical Needs Form (DHS-54A) dated March 18, 2009, pg 2).

(7) Claimant is a certified nurse's aide (CNA); also, as of her disability hearing date six months after filing her disputed application, claimant was working part-time as an in-home chore services provider (home help aide)(Department Exhibit #1, pg 7).

(8) Claimant confirms a polysubstance abuse history, and also, as of her hearing date, she acknowledged she still smoked "a couple reefers" per day; a drug abuse drug screen done on March 4, 2009 tested positive for marijuana metabolites ([REDACTED], pg 17).

(9) Additionally, the health clinic claimant goes to has prescribed standard pain medications and muscle relaxants in response to claimant's self-reported pain ([REDACTED] [REDACTED] pg 4).

(10) Claimant's surgical history is positive for a successful, outpatient carpal tunnel release procedure done in February 2007, followed by outpatient physical therapy (Department Exhibit #1, pgs 103-110).

(11) Claimant's September 2007 cervical spine MRI scan does not identify any gross abnormalities, citing only mild cervical disc bulging at multiple levels and very mild narrowing

at C4-5 and C5-6; additionally, a blood panel done that year ruled out rheumatoid arthritis (Department Exhibit #1, pgs 93 and 94).

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.

...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).

[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).

Claimant does not qualify for the MA disability coverage she seeks at the threshold level because she has not established the existence of a medically severe condition, or combination or conditions, which would prevent employability for the necessary, continuous duration required by MA rules. In fact, claimant lives independently, she is fully independent in all basic living activities, and she was actually part-time employed as a home help aide throughout the period required to be assessed under her disputed MA application. Frankly, absolutely nothing on this record supports a finding claimant is physically or mentally incapable of working full-time in this type position. As such, claimant's September 11, 2008 MA application must remain denied based on lack of duration and severity shown.

Furthermore, a secondary basis exists for denial of claimant's disputed application, that being her ongoing illicit substance abuse (marijuana).

Specifically, in 1997, PL 104-121 went into effect eliminating MA eligibility for those applicants whose primary impairment is substance abuse/dependency when that substance abuse/dependency is a material, contributing factor to the applicant's inability to engage in substantial gainful work activity. The state and federal laws simply no longer permit a finding of disability under such circumstances.

"Material to the determination" means that, if the individual stopped using illicit drugs and/or alcohol, his or her remaining mental and/or physical limitations would not be disabling. In this case, all of the competent, material and substantial evidence of record supports a finding that claimant's failure to remain drug free is a primary, contributing factor to her inability to sustain gainful employment, especially in light of the absence of any medical evidence to support a

contrary finding. Therefore, claimant may also be disqualified from MA eligibility based on ongoing substance abuse.

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 September 11, 2008 MA application.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: March 2, 2010

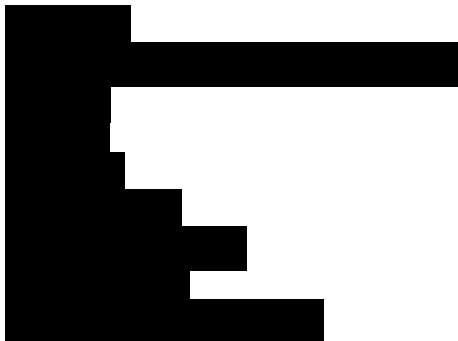
Date Mailed: March 3, 2010

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

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