

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: 2010-10549
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 30, 2010
Clinton 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 30, 2010. Claimant and her son 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 46-year-old female with a high school diploma and two years of post-secondary education; additionally, she has been certified in massage therapy and acute nursing care through [REDACTED] College, per self report.

(2) Claimant stands approximately 5'5" tall and weighs approximately 154 pounds; she is right hand dominant (Department Exhibit #1, pgs 49-51).

(3) On October 30, 2008, a third party liability specialist [REDACTED] applied for disability-based MA/retro-MA on claimant's behalf.

(4) If this application had been approved, the medical expenses associated with claimant's intermittent hospitalizations during the retro-MA period would have been covered by MA (Department Exhibit #1, pgs 21-34, 41 and 120).

(5) When the department denied claimant's MA/retro-MA application, the third party liability specialist filed a hearing request on her behalf and assisted her at the March 30, 2010 hearing.

(6) Claimant initially testified she last worked at a senior care nursing facility in 1997, but that remote work stop date is inconsistent with the medical records presented, and also, with claimant's eventual, contrary admission at hearing.

(7) Claimant's medical records verify she was treated in the [REDACTED] [REDACTED] in September 2008 after reporting suicidal ideation and severe depressive symptoms (Department Exhibit #1, pgs 81-83).

(8) Claimant's medical records also establish a history of treatment for these conditions, as well as one episode of in-patient treatment at [REDACTED] in May 2008 due to a prescription pain medication addiction (Department Exhibit #1, pgs 81 and 82).

(9) In September 2008 (one month before filing the disability application now in dispute), claimant's [REDACTED] admitting urine screen tested positive for excess opiates and benzodiazepines; [REDACTED] provided the following Axis I assessment:

Opiate dependence, alcohol dependence, history of major depressive disorder with suicidal ideations, history of anxiety disorder not otherwise specified, and benzodiazepine dependence/abuse (Department Exhibit #1, pg 83).

(10) Additionally, claimant's mental status evaluation at that time states in relevant part:

The patient is a 45-year-old female who is alert and oriented. She is extremely tearful during the interview. Her mood is depressed, and her affect is guarded and agitated. Her language is tangential. She focuses on pain issues, and she is guarded regarding suicidal issues. She is cognitively intact. The accuracy of information she is giving at times is in doubt (underlined for emphasis). Her speech and language are otherwise normal with the exception of tangentiality. She is also tearful at times. She denies any hallucinations or delusions at this time, and her language content is appropriate (Department Exhibit #1, pg 82).

(11) On September 12, 2008, claimant requested a prescription for [REDACTED] via telephone for her purportedly debilitating low back pain related to a remote fall from a ladder in 1998.

(12) The doctor refused claimant's request and suggested hot/cold compresses and relaxation techniques be used instead (Department Exhibit #1, pg 90).

(13) Two months earlier, in July 2008, claimant was briefly hospitalized with debilitating low back pain complaints reportedly present for "about 10 days 2 weeks" (Department Exhibit #1, pg 75).

(14) Claimant's admitting test results (abdominal/pelvic CT scans/chest x-rays/EKG) all were negative, as was an outpatient stress test she underwent the previous month (Department Exhibit #1, pgs 79 and 80).

(15) By claimant's March 2010 hearing date she was participating in a daily [REDACTED] program, with no other prescription medications noted and no further hospitalizations documented.

(16) Claimant lives with her adult son; her driver's license currently is suspended because she has no money to pay her accumulated Driver Responsibility Fees.

(17) Claimant's son said his mother's personality disappears when she is stressed and she takes on entirely different personalities, further complicated by frequent paranoia, memory lapses and crying episodes.

(18) Claimant has not been involved in any type of mental health treatment or counseling since 2007 and no hospitalizations other than those noted above were reported; however, an independent psychological consultation assessment lists Personality Disorder (NOS) and Recurrent Major Depressive Disorder as updated mental diagnoses based solely on claimant's subjectively reported symptoms during a single visit in April 2009 (Department Exhibit #1, pgs 8-12).

(19) Likewise, an independent physical examination conducted in 2009 describes claimant as a well-developed, well-nourished female in no acute distress with no joint tenderness/inflammation/swelling and good range-of-motion (Department Exhibit #1, pg 6).

(20) Additionally, claimant reported chronic lower back pain with intermittent exacerbations during this physical and she demonstrated tenderness and decreased range-of-motion; no other abnormalities were noted (Department Exhibit #1, pgs 5-7).

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).

...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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptoms(s) alleged.

Claimant is not disqualified from receiving MA/retro-MA at Step 1 because she has not been gainfully employed in at least 12 months.

At Step 2, claimant’s diagnosed mental impairments, when combined, have left her with some non-exertional limitations. However, claimant’s debilitating, incapacitating, constant and severe pain complaints consistently appear disproportionate to the objective medical evidence contained within her file as it relates to her ability to perform substantial gainful work activities. Additionally, this Administrative Law Judge finds claimant’s testimony and the testimony of her

son to be highly inflated and at times inconsistent, thus causing this Administrative Law Judge to question their veracity and give less weight to their testimony in this regard.

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 medications are fully capable of adequate symptom management in this case, given the objective medical evidence presented. Again, this Administrative Law Judge finds claimant's and her son's testimony regarding pain levels and psychological symptoms to be highly inflated for secondary gain (payment of hospital bills via MA). Nevertheless, giving claimant every benefit of doubt, this Administrative Law Judge will find the *de minimus* level of severity and duration exist based solely on claimant's mental diagnoses, and thus, this analysis will continue.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed mental impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis will continue.

At Step 4, this Administrative Law Judge will concede claimant's non-exertional mental symptoms may impair her ability to function in her formerly stressful and physically demanding nursing jobs. However, claimant's medical records fail to support a finding that these symptoms are severe enough to prevent her from engaging in any number of simple, unskilled, low stress jobs currently existing in the national economy as long as medication compliance is maintained. Consequently, this Administrative Law Judge finds claimant could be determined not disabled at Step 4 of the required analysis based on her former experience in unskilled jobs. However, even

if an analysis of Step 5 was required (which it is not), claimant would be unsuccessful in establishing a legally disabling condition.

This is because at Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of all documented impairments. Claimant is a younger individual with successful post-secondary education (two certifications) and an unskilled/semi-skilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical and psychological evidence of record, claimant retains the residual functional capacity to perform a wide variety of unskilled, low stress light or sedentary jobs currently existing in the national economy as those terms are defined at 20 CFR 4160967(a) and (b), despite her documented mental impairments and her protestations to the contrary at hearing. As such, the department's denial of claimant's disputed MA/retro-MA application must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/retro-MA eligibility standards.

Accordingly the department's action is AFFIRMED.

/s/

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

Date Signed: September 1, 2010

Date Mailed: September 2, 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.

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