

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE:

[REDACTED]

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 [REDACTED]. Claimant personally appeared and testified. Claimant was represented by [REDACTED]. This hearing was originally held by [REDACTED]. Administrative Judge Bachman is no longer affiliated with the State Office of Administrative Hearing and Rules and this hearing Decision and Order was completed by [REDACTED], by considering the record in its entirety.

ISSUE

Whether claimant meets the Disability Criteria for Medical Assistance or Retroactive Medical Assistance?

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 [REDACTED], claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On [REDACTED] the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.
- (3) On [REDACTED] [REDACTED] denied.
- (4) On [REDACTED], claimant filed a request for a hearing to contest the department's negative action.

- (5) On [REDACTED] the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the records in the file do not show any evidence of possible leukemia. Her breath sounds were clear and her examination was basically unremarkable. She did have hepatitis. The medical evidence of record does not document and mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retro MA-P was considered in the case and also denied.
- (6) The hearing was held on [REDACTED]. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on [REDACTED].
- (8) On [REDACTED] [REDACTED] approved claimant for MA-P and denied claimant for [REDACTED] benefits stating in its analysis and recommendation: there is a [REDACTED] decision dated [REDACTED] where in a partially favorable determination has been made. The claimant alleged in her SSA application an onset date of September 2006 versus requesting state benefits to [REDACTED]. [REDACTED] the claimant became disabled and the SSA Administrative Law Judge further recommends a payee be appointed. The claimant was approved for [REDACTED] benefits on [REDACTED] and is currently in payment status. Therefore, MA-P is approved effective [REDACTED] (prior). The claimant's impairment's do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work. Therefore, based on the claimant's vocational profile of [REDACTED], a less than high school education and a history of no gainful employment, [REDACTED] claimant but would have been denied per PEM261. No medical review is necessary to SSA allowance. This case does need to be reviewed for continuing benefits in February 2014. At review the following needs to be provided: prior medical packet; DHS 49, B, E, F, G; all hospital and treating source notes and test results; all concentrative examinations including those purchased by the SSA/Disability Determination Service.
- (9) On the date of hearing, claimant was a 47-year old woman whose birth date was [REDACTED]. Claimant was 5' 6" tall and weight 122 pounds.

Claimant completed the [REDACTED] grade and was able to read and write and does have basic math skills.

- (10) Claimant testified that she last worked in [REDACTED] and the record indicates that claimant last worked in 2004 [REDACTED] and in hotel housekeeping.
- (11) Claimant alleges as disabling impairments: gall bladder disease, bad hips, bad right shoulder, hepatitis C, arthritis, bruits, fibromyalgia, osteoporosis, depression, chronic obstructive pulmonary disease, asthma and bronchitis.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (BAM), the Program Eligibility Manual (BEM) 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 do 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 has not worked since [REDACTED] according to her testimony on the record. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified that she does live with her boyfriend and that she does not cook and usually goes grocery shopping or else she will leave it in the cart and she does very little housekeeping because she's in pain. Sometimes her boyfriend helps her to dress if needed she can't tie her shoes or lift over her head or bend. Claimant testified that she sits around all day in her pajamas. Claimant testified on the record she stopped smoking in 2007 and stopped drinking alcohol in [REDACTED] and that she can walk 100ft, sit for 15 minutes and then she gets uncomfortable and she can stand for 10 minutes or so and the heaviest weight she can carry is 5 pounds. Claimant testified that her pair [REDACTED] Social Security [REDACTED] determined that prior to [REDACTED] the claimant had the residual functional capacity to perform light work as declined in 20 CFR 416.967(b) except there should be no exposure to heights or hazards, no climbing ladders, ropes or scaffold, no concentrated exposure to respiratory irritants, and frequent but not constant handling and fingering. Moreover, the work should allow a sit stand option that allows her to change positions every 30 minutes at a time. The SSA Judge determined that in making his finding he considered all medical evidence which could reasonably be accepted as consistent with the objective medical evidence and other evidence based on the requirement of 20 CFR 416.929 and SSRS96-4P, 96-7P. The Administrative Law Judge also considered opinion evidence in accordance with the requirements of 20 CFR 416.927 and SSRS96-2P, 96-5P, 96-6P, and 06-3P. This Administrative Law Judge is bound by the Social Security Administration determination. Because of the SSA determination it is not necessary for the Administrative Law Judge to discuss the issue of disability. BEM, Item 260.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of Medically Disabled under Medical Assistance Program as of the Social Security Administration determination of [REDACTED]

Accordingly, the department's decision is partially REVERSED. The department is ORDERED to opening ongoing medical assistance case for the claimant effective the month of the SSI entitlement.

According to the Social Security Administration's determination, claimant is not disabled prior to June 3, 2010. Therefore, claimant is not considered disabled from November 2008 to June 2, 2010. The department's decision is AFFIRMED in accordance with the Social Security Administration determination.

/s/ _____
[Redacted Signature]

Date Signed: 4/12/11

Date Mailed: 4/12/11

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.

[Redacted]