

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201054913
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: November 17, 2010
Bay 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on November 17, 2010. Claimant personally appeared and testified. She was represented by [REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-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 right-handed, 48-year-old high school graduate who stands approximately 5'10" tall and weighs approximately 170 pounds, per self report.
2. Claimant has been separated from her spouse since 2008; she currently lives with friends in [REDACTED].
3. Claimant has an unskilled work history (waitressing/housekeeping), but she has not been gainfully employed in several years (Department Exhibit #1, pg 12).
4. Claimant has never participated in substance abuse treatment or counseling and she alleges she has no alcohol abuse history;

however, she has not driven since 2007 when she incurred an alcohol-related offense ([REDACTED]).

5. Likewise, claimant has no history of psychiatric/psychological hospitalizations or treatment, nor has she ever been involved in any outpatient mental health treatment or counseling.
6. Currently, claimant's family doctor has prescribed an antidepressant ([REDACTED]) for self-reported symptom management.
7. On January 14, 2010, claimant filed the most recent of several disability-based MA/retro-MA applications; all previous applications were denied.
8. If claimant's January 2010 application had been approved, the expenses associated with two brief cardiac hospitalizations claimant had in October and November 2009 would have been covered by MA; however, the department denied the application by written notice dated May 20, 2010 (Department Exhibit #1, pgs 13-14, 28-32 and 42-46).
9. In response, claimant's authorized representative filed a timely hearing request to dispute the department's disability disallowance, held in the ([REDACTED]) office on November 17, 2010.
10. Claimant's November 2009 cardiac discharge summary notes only minor sinus rhythm abnormalities via EKG testing; additionally, claimant stipulated at hearing she has no severe heart problems and she was taking only a high blood pressure regulator as of the hearing date.
11. Additionally, claimant reported at hearing she has a rheumatoid arthritis diagnosis; however, none of the routine blood work or doctors' reports submitted substantiates the existence of this condition.
12. Claimant's medical records confirm degenerative disc disease in the cervical/lumbar spines, and also, she underwent a successful cervical fusion at C5-C6 in February 2009 (Department Exhibit #1, pgs 9, 16, 25, 36-41, 86-88 and 130).
13. Since the surgery, claimant has been taking methadone as prescribed for pain management and she uses a cane for balance/stability.

14. Claimant has been diagnosed with Chronic Obstructive Pulmonary Disease (COPD) not uncommon in long-term nicotine abuse patients; however, her pulmonary function test dated April 20, 2010 reveals only mild obstructive disease highly responsive to bronchodilators (inhalers), which have been prescribed (Department Exhibit #1, pg 44; Department Exhibit #2, pgs 1 and 2).
15. On April 5, 2010, the doctors on the department's State Hearing Review Team (SHRT) issued the following findings, after review of the above-referenced medical records:

The claimant is alleging disability secondary to chronic obstructive pulmonary disease, asthma, neck and back pain. While there is evidence of a pulmonary condition, there is no evidence that this condition is disabling. These findings are confirmed by an independent medical examination recently performed. The claimant's issues of degenerative disc disease are stable and while imposing some limitations, likewise do not prevent the claimant from performing tasks. There is a history of alcohol dependence and depression secondary to claimant's medical condition, per recent psychiatric evaluation, but this places no limitations on the claimant's ability to perform tasks (Department Exhibit #1,pg 55).

16. On October 4, 2010, the SHRT doctors issued a second disability disallowance prior to claimant's hearing date which finds no disabling mental/physical impairments and concludes claimant is fully capable of performing a wide range of light work pursuant to Medical-Vocational Rule 202.22 (Department Exhibit #3, pgs 1 and 2).
17. At hearing on November 17, 2010, claimant's authorized representative requested an extension of the record to obtain the results of certain upcoming EMG testing allegedly scheduled for November 29, 2010.
18. This Administrative Law Judge granted the authorized representative's request; however, on January 3, 2011, claimant's authorized representative requested record closure, stating she would not be able to forward an EMG report for this client.

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

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(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).

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).

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).
The person claiming a physical or mental disability has the burden to establish it

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).

Claimant is not disqualified from receiving MA/retro-MA at Step 1, because she is not currently employed and she has not been employed in several years.

At Step 2, claimant's diagnosed physical impairments, in combination, have left her with some range of motion limitations, shortness of breath symptoms and pain. However, it must be noted no other severe physical impairments are documented by the evidence of record, and no severe mental impairments have been shown. Furthermore, claimant's residual degenerative disc disease and COPD appear fully capable of adequate management with current prescription medications.

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. Nevertheless, claimant's medically managed conditions meet the *de minimus* level of severity and duration required for further analysis.

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

At Step 4, the record supports claimant's contention she is incapable of returning to medium exertional level jobs like waitressing and housecleaning, as those jobs require extensive lifting, walking, bending, carrying, etc. which could exacerbate

claimant's symptoms and/or cause additional injury. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a high school education and unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform sedentary or light work, as those terms are defined above. This finding is consistent with the department's State Hearing Review Team (SHRT) decisions dated April 5, 2010 and October 4, 2010.

Claimant's biggest barriers to employability appear to be her displacement from medium exertional level work, in combination with her lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with her skills, interests and abilities.

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 eligibility standards.

Accordingly, the department's denial of claimant's January 14, 2010 MA/retro-MA application is AFFIRMED.

_____/S/_____
Marlene B. Magyar
Administrative Law Judge
for Duane Berger, Acting Director
Department of Human Services

Date Signed: January 12, 2011

Date Mailed: January 13, 2011

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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