

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

IN THE MATTER OF:



Reg No. 201055862  
Issue No. 2009  
Case No. [REDACTED]  
Hearing Date: January 19, 2011  
Macomb 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, a telephone hearing was held on January 19, 2011. Claimant personally appeared and testified. She was represented by [REDACTED] [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 62-year-old female who started receiving widow's financial benefits without medical insurance in October 2010, subsequent to her husband's September 21, 2010 death.
2. Claimant stands approximately 5'3" tall and weighs approximately 118 pounds; she is right hand dominant.
3. On August 6, 2010, claimant filed an MA/retro-MA application secondary to ongoing medical expenses associated with orthopedic injuries she sustained when she fell off her bicycle on July 18, 2010 (i.e., a comminuted left hip fracture and a transverse left wrist fracture); when that application was denied claimant filed a timely hearing request (Department Exhibit #1, pg 32).

4. On July 22, 2010, claimant was transferred from the hospital to the [REDACTED] for daily physical/occupational therapy until her discharge on August 3, 2010 (Department Exhibit #1, pgs 1-2 and 31-32).
5. Claimant has a high school diploma and a consistent work history, including approximately 12 years of interior decorating followed by 14 years working as a business manager/bookkeeper for a welding shop (Department Exhibit #1, pg 1).
6. Claimant's most recent job as a part-time caregiver ended when she got injured in July 2010; she has remained unemployed since then.
7. As of claimant's January 19, 2011 hearing date, she developed chronic, severe post-traumatic arthritis pain unresponsive to the pain medication [REDACTED] currently being prescribed despite compliance with the daily dosage schedule.
8. Additionally, claimant's ongoing side-effects from this medication include dizziness, general fatigue and the inability to maintain wakefulness without daily naps.
9. Claimant continues to need a walker or a four-pronged cane daily for ambulation, depending on her current pain level, her strength, and her mobility on any given day.
10. Claimant relies on assistance from friends and family for basic daily living activities such as driving, cooking, laundry, cleaning, shopping and bathing (i.e., she needs a shower chair and a personal spotter while bathing).
11. Claimant is prevented from sitting, standing, walking, lifting, bending, carrying, etc., for extended periods due to her ongoing pain.
12. On February 4, 2011, the department's State Hearing Review Team (SHRT) issued a recommended decision advocating continuation of the application denial based on lack of severity shown for the required duration (12 continuous months).

### **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).

"Disability" is:

...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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone.... 20 CFR 416.945(e).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and

other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

...Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms.... 20 CFR 416.929(c)(3).

...Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account...in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(3).

...We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons.... 20 CFR 416.929(c)(3).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

[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).

In claimant's case, the intensity, severity and chronicity of the pain and medication side-effects she describes is consistent with the objective medical evidence presented. Additionally, claimant is of advanced age; consequently, this Administrative Law Judge finds her condition not likely to significantly improve

beyond its current level (i.e., she has reached Maximum Medical Improvement-MMI). As such, great weight must be given to claimant's testimony in this regard.

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 since July 2010.

At Step 2, the objective medical evidence clearly shows claimant has significant mobility restrictions and pain which can be expected to last for at least 12 months. As such, an analysis of Step 3 is required.

At Step 3, this Administrative Law Judge finds claimant's impairments and residual limitations rise to the level necessary to be specifically disabling by law at the sedentary and light exertional levels specified under Medical-Vocational Rules 201.04 and 202.04. Consequently, under the facts and circumstances presented by this case, claimant has shown, by clear and convincing medical evidence and credible testimony, that her ongoing limitations (in light of her age

and work history) will prevent her from performing substantial gainful work activity for at least 12 months. Therefore, this Administrative Law Judge finds claimant meets the MA/retro-MA disability standard cited above, and SHRT's recommended decision to the contrary simply cannot be adopted.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides SHRT erred in determining claimant is not currently disabled for MA/retro-MA eligibility purposes (from July 2010 forward).

Accordingly, SHRT's recommended decision is REVERSED, and it is Ordered that:

1. The department shall process claimant's disputed MA/retro-MA application and shall award her all the MA/retro-MA benefits which she may be entitled to receive, as long as she met/meets the remaining financial and non-financial eligibility factors necessary to qualify in all affected months.
2. The department shall review claimant's condition for medical improvement in July 2013.
3. The department shall obtain updated medical evidence regarding claimant's continued treatment, progress and prognosis at review.

/s/  
Marlene B. Magyar  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: March 14, 2011

Date Mailed: March 15, 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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