

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: 2010-7863
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2010
Muskegon 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 January 13, 2010. Claimant personally appeared and testified with a patient advocate from [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 49-year-old, widowed, ongoing nicotine –dependent female with a limited education (8th grade) who lives in her own home; additionally, claimant’s daughter and two grandsons currently are residing there with her, per self report.

(2) Claimant has an unskilled work history, and although she reported she has not worked since 2001, the form she completed at application indicates she left her most recent, fast food job (██████████) in 2003 when she was fired (Department Exhibit #1, pg 252).

(3) Claimant was hospitalized in June 2009 (6/12/09-6/25/09) with shortness of breath symptoms, coughing, right flank pain, rigors and sweats; consequently, an MA/retro-MA application was filed on her behalf while she was inpatient on June 22, 2009 (Department Exhibit #1, pgs 202-236).

(4) If that application had been approved, the medical expenses associated with claimant's hospitalization and subsequent treatment would have been covered by MA, but on September 16, 2009, the department's Medical Review Team (MRT) denied claimant's application (Department Exhibit #1, pgs 261 and 262).

(5) On October 7, 2009, the department received a hearing request timely filed by ██████████ on claimant's behalf.

(6) Claimant's hearing was held on January 13, 2010.

(7) Claimant stands approximately 5'3" tall and weighs approximately 127 pounds; she is right hand dominant.

(8) Claimant was diagnosed with two, right-sided plural effusions and multiple cavitory lesions in addition to empyema (a collection of infectious pus between the plural space) as revealed by right thoracentesis (Department Exhibit #1, pg 239).

(9) Claimant was kept in respiratory isolation due to the infectious nature of her illness and treated with antibiotics (Department Exhibit #1, pg 226).

(10) On June 19, 2009, claimant underwent a right thoracotomy and empyema drainage with decortication (Department Exhibit #1, pgs 217 and 218).

(11) This procedure further defined claimant's diagnoses to include necrotizing pneumonia; however, cancer and tuberculosis were positively ruled out (Department Exhibit #1, pgs 217 and 218).

(12) On January 29, 2009 (7 months post-hospitalization), claimant underwent an independent physical examination which evidences no severe physical abnormalities, but claimant reported chest, lower back and cervical pain (Department Exhibit #1, pgs 33-35).

(13) No objective medical tests (e. g., x-rays/MRIs/CT scans/EMGs) were submitted at hearing by claimant or her patient advocate to determine a basis for claimant's subjectively reported chronic pain, and claimant testified at hearing her primary care provider has not imposed any restrictions on her physical exertional activities.

(14) Claimant's current prescription medications include a sleep aid and [REDACTED] for her self-reported "restless leg syndrome," as well as pain medication and a muscle relaxant; her most recent office visit in November 2009, per self report.

(15) Claimant's primary care physician also has prescribed an inhaler as needed, not uncommon for patients with an extensive tobacco abuse history.

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 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.

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

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 symptom(s) alleged.

Claimant does not qualify for the MA coverage she seeks because neither she nor her patient advocate have presented any objective medical records to establish the presence of a physical or mental condition, or combination of conditions, which would prevent employability. In fact, claimant is not currently engaged in mental health treatment or counseling and her medical records reveal absolutely no mental, emotional or cognitive impairments. Additionally, while claimant was hospitalized with a serious respiratory illness in June 2009, that condition has resolved. Furthermore, claimant's ongoing shortness of breath symptoms are adequately controlled with her prescription inhaler as needed, and also, her condition can reasonably be expected to improve even further if she would quit smoking, as repeatedly medically recommended.

Lastly, 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. Claimant's current prescription medication schedule appears to provide adequate symptom control for her diagnosed conditions, when taken as prescribed. Consequently, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard

to be applied in disability determination cases. As such, claimant's June 22, 2009 MA application must remain denied.

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 action is AFFIRMED.

/s/

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

Date Signed: February 9, 2010

Date Mailed: February 11, 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

cc:

