

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: 2010-9627
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 February 11, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and Retroactive Medical Assistance (Retro MA-P)?

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 August 2, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.

(2) On September 1, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lack duration.

(3) On October 9, 2009, the department caseworker sent claimant notice that the application was denied.

(4) On October 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 18, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: that claimant was admitted in April 2009 due to hyperglycemic secondary to steroid, urticaria and an allergic reaction to [REDACTED]. Her condition improved with treatment. The medical evidence of record does not document a 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). Retroactive MA-P was considered in this case and is also denied.

(6) Claimant is a 57-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 162 pounds. Claimant recently gained 15 pounds. Claimant has a Masters Degree in Political Science and also has a PhD and is able to read and write and does have basic math skills as well as scientific research skills.

(7) Claimant last worked in 2003 for the [REDACTED] as a speech writer and translator.

(8) Claimant alleges as disabling impairments: depression, hyperglycemic reactions to medication, diabetes mellitus and effected eye-sight.

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).

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 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant was admitted in April 2009 due to hyperglycemia secondary to steroids, urticaria, and an allergic reaction to [REDACTED]. At discharge claimant was feeling better and the rash was almost cleared and blood sugars were getting under control. (p17) There were no mental limitations noted. (pp13-15) A Medical Examination report in the file dated April 22, 2009 indicates that the clinical impressions that claimant was improving and that she could frequently lift 10 pounds or less and that she could not operate foot and leg controls and she could not do pushing and pulling and fine manipulating with either upper or lower extremities. A discharge summary indicates that claimant was admitted on April 11, 2009 because of an allergic reaction. There were no new complaints of oral thrush and her tongue and lips were improving. Her lungs were clear to

auscultation. Her heart had regular rate and rhythm. Extremities, the rash on her tongue and lips was healing and improving. She was diagnosed with acute allergic reaction [REDACTED] Erythema multiforme, major and steroids, psuedobacteremia and chronic sinusitis. No need for antibiotics per infectious disease recommendations. Steroid induced hyperglycemia which was managed by sliding scale as per protocol on April 13, 2009. The claimant is feeling better and the rash is almost cleared and blood sugars were getting under control. At that stage she was deemed to be stable and was discharged home to follow-up with her primary care physician. (p17)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months. Claimant testified on the record that she is married but legally separated and she lives with her husband and children. Claimant has no children under 18 and no income. Claimant does not have a driver's license but her daughter and husband take her where she needs to go. Claimant testified that she cooks everyday and cooks things like Mediterranean food and Italian food. Claimant testified that she does grocery shop two times per month with her husband and daughter and needs no help to grocery shop. Claimant testified that she cleans her home and does laundry, dish washing, cooking and dusting. Claimant testified that her hobby is reading. Claimant testified that she can stand for one hour at a time, walk for 45 minutes at a time and can sit with no limits and usually can sit about 2-3 hours at a time. Claimant testified that she cannot squat but she can bend at the waist, shower and dress herself, tie her shoes and touch her toes. Claimant testified that she does fatigued and gets a migraine about every 4 days, but she just relaxes and drinks water and after she takes her medication the pain disappears. Claimant testified that she is right-handed and her arms and hands are fine. Her legs and feet are fine, knees are fine and her back is fine. Claimant testifies that she carry a gallon of orange

juice. Claimant testified that in a typical day she watches television, reads, cooks, works on the computer for a couple of hours applying for jobs and reads the news.

There are no laboratory or x-ray findings indicating claimant has a deteriorating condition. In fact, the DHS-59 Medical Examination Report indicates that claimant's condition was improving. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In addition, claimant's condition has improved to the point that she does not have any physical limitations. Claimant testified that she does not have any physical limitations and testified that she does not have mental impairments. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or mental impairment for purposes of disability. For these reasons, this Administrative Law Judge finds the claimant has failed to meet the burden of proof at step 2. Claimant must be denied benefits at this step based upon the failure to meet the evidentiary burden.

If claimant had not been denied at step 2 the analysis would proceed to step 3 where the medical evidence of claimant's condition is not give rise to a finding that she would meet the statutory listing in the code of Federal Regulations.

If claimant had not already been denied at step 2, this Administrative Law Judge would have to deny her again at step 4 based upon her ability to perform her past relevant work. Claimant was a Secretariat speech writer and translator for the [REDACTED]. Claimant lost her job because the [REDACTED] government felt that it was inappropriate for a women to be conducting the job that claimant was conducting. Claimant did not lose her job based upon a health problem. Claimant did sue and receive a settlement after approximately 3 years in court. There is no medical evidence upon which this Administrative Law Judge could base a finding

that claimant is unable to perform work which she was engaged in, in the past. Therefore, if claimant had not already been denied at step 2, she would be denied again at step 4.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly denied claimant's application for disability based Medical Assistance, and Retroactive Medical Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 21, 2010

Date Mailed: April 22, 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 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.

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