

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: 2010-9636

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 3, 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, 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 July 1, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On August 19, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.

(3) On August 19, 2009, the department caseworker sent claimant notice that the application was denied.

(4) On October 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 16, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: That claimant fractured her ankle in February 2009. In August 2009 the x-ray showed that the fracture well healed. The medical evidence of record indicates that the claimant condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration per 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(6) Claimant is a 59-year-old man whose birth date is [REDACTED] Claimant is 5'4" tall and weighs 200 pounds. Claimant graduated from high school and attended 3 years of continued education in college. Claimant is able to read and write and does have basic math skills.

(7) Claimant currently works as a certified nursing assistant/ward clerk and does filing and basic office duties, but is unable to perform the certified nursing assistant portion of her job because of her limitations for walking. She earns [REDACTED] per hour and works [REDACTED] hours every two weeks. She was off work on injury status from February 8, 2009 to August 18, 2009.

(8) Claimant alleges as disabling impairments: right ankle fracture.

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 Bridges Administrative Manual (BAM), the Bridges 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 engaged in substantial gainful activity. Therefore claimant is disqualified from receiving disability at Step 1.

Claimant testified on the record that she has returned to work and that she only wants assistance with paying her hospital medical bills. Unfortunately, claimant is categorically eligible for Medical Assistance benefit eligibility because she is not blind, aged, caretaker relative, or disabled. The Administrative Law Judge will proceed through this sequential evaluation process for the sake of argument.

At Step 2, the claimant has the burden of proof of establishing that she has a severely restrictive physical/mental impairment that has lasted or is expected to last for the duration of at least 12 months. Claimant's only impairment is a right ankle fracture and she had surgery and has 2 pins and a plate in it and she also has hypertension. There is insufficient objective medical evidence in the record that claimant suffers a severely restrictive physical/mental impairment.

In August 2009, x-rays revealed that the fracture was well healed. The claimant had her syndesmotom screw removed in May 2009, and have weight bearing accelerated. Her skin was intact and she had minimal swelling. There was no tenderness of the distal fibula. She did have decreased range of motion on the ankle. Sensation was intact. On August 10, 2009, a final

report from the [REDACTED] indicates that the physical examination of her right lower extremity, once the boot was removed revealed skin is intact. (p22) Claimant had a minimal amount of swelling. Claimant had no tenderness on distal fibula. Claimant has decreased range of motion in her ankle. Claimant has only a few degrees of dorsiflexion and plantiflexion. Claimant had 2+ dorsalis pedis and posterior tibialis pulse and sensation was grossly intact. X-rays were taken of the right ankle revealing hardware over the right distal fibula. The fracture was well healed with no signs of any hardware failure. (pp 22-23) A medical Examination report dated February 25, 2009, indicates that claimant's blood pressure was 200/107, pulse 87, respiratory rate 18 and temperature 36.4, pulse oximetry 98% and GCS was 15. In the psychiatric, she was well nourished, well built, not in any acute distress, oriented x3. Mood and judgment was normal. Ears, nose, mouth and throat, external infection on the ears and nose reveals no acute abnormality. Oropharynx, no exudate. Neck was supple. Negative JVD. Thyroid was enlarged. Normal sinus rhythm. Lungs were clear and the abdomen was soft, non-distended, non-tender. No organomegaly. Bowel sounds active. Claimant had a splint on the lower right extremity. The rest of the musculoskeletal system was unremarkable. The neurological higher function cranial nerves, grossly normal. Moves all the extremities well except the right lower extremity because of the splint. There are no gross neurologic deficits. Claimant testified on the record that she doesn't have any mental impairment.

Claimant has reports of pain in her ankle, which does have some corresponding to support the reports of symptoms made by the claimant. However, there is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant testified that her condition has improved and that she returned

to work August 2009. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has severely restrictive physical impairment. There is no evidence in the record indicating claimant suffers mental limitations. There is a mental residual functional capacity assessment in the record. Claimant does not allege any mental impairment. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden. Claimant's impairments do not meet duration.

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

If claimant had not been denied at step 2, this Administrative Law Judge would have to deny her again at step 4 base upon her ability to perform her past relevant work. Claimant is currently gainfully employed in her past relevant work. She has been accommodated by her employer. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which she is currently engaged in and has engaged in, in the past.

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 because her impairment does not meet duration and because she does have medical improvement and has returned to work.

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 30, 2010

Date Mailed: May 03, 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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