

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: 2010-33016
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2010
Gratiot 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 June 10, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly deny retro-MA (Medicaid) disability status to claimant in January 2010?

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 married female closely approaching advanced age (52) with a high school education (Department Exhibit #3, pg. 4).
- (2) Secondary to claimant's unskilled, medium exertional work experience (waitressing) she developed a history of extensive degenerative lumbar disc disease and pain, including an L5-S1 fusion in 2003.

(3) On March 9, 2010, claimant applied for disability-based MA/retro-MA.

(4) On May 24, 2010, the department's local Medical Review Team (MRT) approved this application based on claimant's documented spinal impairments combined with her chronic residual pain symptoms.

(5) MRT's favorable decision awarded retro-MA coverage to claimant beginning February 2010, but not earlier.

(6) On May 24, 2010, the State Office of Administrative Hearings and Rules issued a Summary Order of Partial Disposition requiring a hearing to proceed on MRT's denial of retro-MA in December 2009 and January 2010.

(7) Claimant's hearing was held on June 10, 2010.

(8) Claimant stipulated on the record at hearing she was confining her dispute to MRT's denial of retro-MA coverage in January 2010 only.

(9) In January 2010, claimant had an exacerbation of lower lumbar pain requiring urgent care treatment (pain level: 10/10).

(10) Claimant stated at hearing her chronic daily pain level has remained constant at "7" or above since before January 2010 despite full compliance with her daily pain medication schedule [REDACTED]

(11) Claimant's pain symptoms significantly compromise her ability to engage in all basic daily living activities such as driving, shopping, yard work, cleaning, etc., because she is unable to stand, walk, sit, lift or carry objects without exacerbating her chronic pain symptoms which then results in her need to seek immediately medical intervention.

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).

Michigan has chosen as its standard of MA disability the same standard that the federal Social Security Administration (SSA) uses.

"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).

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 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 pain she described experiencing in January 2010 is consistent with the objective medical evidence presented by all her treating doctors, and also, is consistent with the symptoms the department approved her MA application on beginning February 2010. Consequently, great weight and serious consideration 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).

Based on Finding of Fact #1-#11 above, this Administrative Law Judge answers:

Step #1: No.

Step #2: Yes.

Step #3: No.

Step #4: No.

Step #5: No.

Consequently, Medical-Vocational Grid Rule 201.12 directs a finding of disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant was not disabled in January 2010, pursuant to the filing of her March 9, 2010 MA/retro-MA application.

Accordingly, the department's January 2010 retro-MA denial is REVERSED, and this case is returned to the local office for application reinstatement and reprocessing to determine whether claimant met all of the other financial and non-financial eligibility factors necessary to qualify for assistance in that month. Coverage shall begin January 1, 2010, if the department determines all remaining eligibility factors were met. **SO ORDERED.**

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

Date Signed: July 12, 2010

Date Mailed: July 14, 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/cv

cc:

