

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201045366  
Issue No. 2009  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: November 23, 2010  
Wayne 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 November 23, 2010. Claimant personally appeared and testified.

**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 a material fact:

1. Claimant is a single female who will be 44 years old on [REDACTED] (Department Exhibit #1, pg 11).
2. On July 16, 2010, claimant signed a written hearing request protesting the department's denial of disability-based MA/retro-MA (Department Exhibit #1, pg 4).
3. Claimant's hearing was held by conference telephone on November 23, 2010.
4. Claimant's medical history is positive for a remote stroke in 2004, per her hearing testimony.

5. Claimant has an unskilled work history; after the stroke, claimant returned to part-time restaurant waitressing in 2007 and she remained employed there until 2009, when she was laid-off due to downsizing.
6. Claimant lives alone in [REDACTED] she does not have a valid driver's license so she relies on the bus (public transportation) or friends to transport her wherever she needs to go.
7. Claimant also has been diagnosed with high blood pressure and with non-insulin dependent diabetes, both fully capable of adequate control (and under good control) with current prescription medications (Department Exhibit #1, pgs 5, 7 and 12).
8. On June 19, 2010, claimant underwent an independent physical examination; no severe mental or physical impairments were documented at that time (Department Exhibit #1, pgs 19-25).
9. Claimant stated at the hearing she needs medical assistance to pay for her prescription medications; she was advised to file an Adult Medical Program (AMP) application before the open enrollment period closes.

### **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).

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 or 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/retro-MA coverage she seeks because she has not presented any objective medical records to establish the presence of a physical or mental condition, or combination of conditions, supportive of same.

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 medications appear fully capable of symptom control given the objective medical evidence presented. Consequently, this Administrative Law Judge concludes claimant is 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 July 27, 2009 MA/retro-MA 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/retro-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: November 30, 2010


Date Mailed: November 30, 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

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