

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: 2010-9404  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 14, 2010  
Macomb 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, an in-person hearing was held on January 14, 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 27, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On August 27, 2009, the Medical Review Team denied claimant's application stating that claimant impairments lack duration.

(3) On September 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 8, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: there is a treating source MSO that the claimant was disabled because of the above stated health concern. While it is reasonable to assume that the claimant was disabled at the time, the medical evidence since supports that findings that the claimant now retains the ability to return to gainful, light exertional tasks. The claimant's past relevant work is of a light, skilled nature. As such, the claimant retains the ability to perform all duties with their past relevant work. MA-P and Retro MA-P are denied by this decision. Listings 4.02, 4.04, and 6.02 were considered in this determination.

(6) Claimant is a 63-year-old woman whose birth-date is [REDACTED] Claimant turned 64 years old the day after the hearing.

(7) Claimant is 5'7 ½" tall and weighs 130 pounds. Claimant is a high school graduate is able to read and write and does have basic math skills.

(8) Claimant last worked in 2004 as a [REDACTED], the job that she worked at for 18 years.

(9) Claimant alleges as disabling impairments: kidney failure in 2009, coronary artery disease in 2009, back pain and depression.

#### 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 not engaged in substantial gainful activity and has not worked since 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on September 23, 2009, The [REDACTED] letter indicates that claimant was a patient in [REDACTED] in July. At that time she was being treated for kidney failure, anxiety, fatigue and exhaustion. She actually had been profoundly weak and consequently was deemed to be somewhat anxious and depressed. But the diagnoses turned out to be that she actually had Class 4 congestive heart failure and a cardiomyopathy, ejection fraction of less than 30%. A cardiac catheterization was performed and she was found to have an extremely tight life threatening left main disease, which would explain why the patient was so weak, so tired, and could not get out of bed. She was sent emergently to open heart surgery. She was done on the day as the catheterization. Since that time she has been recovering nicely and has been compliant, but she is unable continue her treatments because she is uninsured. On July 20, 2009, claimant's blood pressure was 132/89 and 166/100, her respiratory rate was 68-75 and her oxygen saturation point was 98%. She was alert and oriented. Her heart had regular rate and rhythm, S1 and S2, grade 2/6 murmur at the apex, sinus rhythm, sinus tachycardia, her neck had not JVD, her lungs decreased at the basis and the left greater than the right and had no wheezes. Her abdomen was soft with positive bowel

sounds and edema. She was diagnosed with the impression of acute systolic failure, valvular heart disease, moderate to severe MR. Recent acute renal failure, caution with ACE inhibitor, anemia, hypertension, depression, radiculopathy as well as smoking. She was also diagnosed macrocytic anemia. On June 26, 2009, claimant was 5'7" tall and weighed 112 pounds. She was alert and oriented x3. Her speech was fluent. She had no complaints. She did admit to feeling somewhat light-headed. Cranial nerves 2-12 were grossly intact. Motor examination in the upper extremities, there was strength in both upper extremities, and both elbows 4/5, strength in both hands and wrists 5/5, bilateral hip flexor strength 4-/5, strength from the knees extending into both feet and ankles is 5/5. Sensory examination: No deficits to light touch or pinprick all extremities. DTs 2+ throughout both upper extremities, knee jerks 2+, ankle jerks 1+. ADLs required standby to maximum assistance. Transfers require minimal assistance. Claimant was in the hospital from June 16-June 24 for kidney failure and 90% blockage as well as open heart surgery. A chest x-ray was taken June 30, 2009 there were two views of the chest obtained. There were mild degenerative and boney vascular changes present and mild mild cardiomegaly. The cardiac borders were difficult to determine due to what appeared to be moderate sized bilateral pleural effusions with bibasilar atelectasis or less likely pneumonia. The findings of left lung base were more sever than those on the right base. The upper lung fields were clear with no vascular congestion. Claimant receives her deceased husbands Social Security benefits in the amount of \$1382 per month.

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 the duration of at least 12 months. Although she had a coronary bypass x3, adrenal failure and her condition has improved somewhat, claimant was still somewhat limited. Claimant testified on the record that

she does have a driver's license and drives to the store 2-3 times per week and the farthest she has to drive is 4 miles. Claimant testified that she frozen dinners and microwaves them and she grocery shops two times per week but she needs help getting around the store because she is short of breath. Claimant also testified that she dusts and does dishes and she gardens if she's able to do it a little bit. Claimant testified that she can stand for 20 -30 minutes and can sit with no limits. Claimant can walk a half a block but not squat. Claimant is able to bend at the waist, shower and dress herself, tie her shoes, but cannot touch her toes. Claimant's level of pain on a scale from 1-10 without medication is a 12 and with medication is 7. Claimant testified that she has lower back pain and walks bent over. Claimant is right handed and stated that her legs and arms are fine and her legs and feet are fine and her knees are fine. The heaviest weight that the claimant can carry is 10 pounds and she does smoke a half pack of cigarettes per day. Her doctors told her to quit with no cessation.

At step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of the law.

At step 4, claimant testified on the record that she worked for 18 years as a switchboard operator and then when the business changed. This Administrative Law Judge finds that claimant recently had a triple bi-pass as well as acute kidney failure. She probably cannot perform her prior work with her impairments as she is still recovering. Her treating physician has stated that she has been recovering and has been compliant with medications, but she cannot get the appropriate follow-up care and the tests that she needs. A treating physician has stated that she is unable to work. Therefore, this Administrative Law Judge finds that claimant has established that she probably cannot perform her prior work. Claimant is not disqualified at receiving disability at step 4.

The Administrative Law Judge will proceed through sequential evaluation process to determine whether or not claimant has a residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

This Administrative Law Judge finds that with a combination of claimant's impairments, i.e., her coronary artery disease, adrenal failure, degenerative disc problems in her back and her depression as well as her pain, that she can probably only perform sedentary work at best. Claimant is at an advanced age at age 64, she is a high school graduate and her work does not provide for direct entry into skilled work. Therefore, this Administrative Law Judge finds that claimant is disabled pursuant to Medical Vocation Rule 201.04 and 201.06.

The department is required to initiate a determination of claimant's financial eligibility for the requested benefits if it has not been previously done

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance and Retroactive Medical Assistance program as of the July 27, 2009 application date. Claimant is also disabled for the Retroactive Medical Assistance period of June, May and April 2009.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the July 27, 2009 Medical Assistance and Retroactive assistance application if it has not already done so to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing. Based upon claimant's advanced age, there is no requirement for a medical review in the future because claimant will turn 65 January 15, 2011.

/s/  
Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director

Department of Human Services

Date Signed: April 26, 2010

Date Mailed: April 27, 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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