

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
1

Reg No. 2011351
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: December 8, 2010
Eaton 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, an in-person hearing was held on December 8, 2010. Claimant personally appeared and testified. She was represented by [REDACTED]

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 as material fact:

1. Claimant is a single, 36-year-old telemarketer who has an Associates Degree in Applied Arts and Sciences from [REDACTED]
2. Claimant resides with her significant other in [REDACTED]; she has a valid driver's license and access to a roadworthy vehicle, which she currently uses to get to and from her job.
3. On April 29, 2010, claimant's authorized representative [REDACTED] filed a disability-based MA/retro-MA application on claimant's behalf.

4. If approved, the medical expenses associated with claimant's five-day hospitalization (1/31/10-2/5/10) would have been covered by MA.
5. Claimant's application was not approved; consequently, her authorized representative filed a hearing request to dispute the department's finding she was not disabled under the applicable rules.
6. Claimant's hearing was held in the [REDACTED] [REDACTED] on December 8, 2010.
7. Claimant stands approximately 5'2" tall and is medically obese at approximately 210 pounds (BMI=38.4); she is right hand dominant, per self report.
8. In January 2010, claimant had a serious fall which resulted in a right arm fracture (right distal radius), a left radial head fracture, and cervical fractures at C1/C2, thus necessitating the hospitalization referenced in Finding of Fact #4 above.
9. During claimant's hospital stay, her right arm was put in a cast after the surgeon performed open reduction/internal fixation (ORIF); also, regarding claimant's left radial fracture, the instructions were for claimant to bear weight as tolerated; no operative intervention was necessary; however, a neck collar (Miami J) was proposed for up to a month while her cervical fractures healed (Department Exhibit #1, pgs 21 and 22).
10. Claimant's discharge summary indicates she did very well in physical/occupational therapy while hospitalized, and her pain responded very well to the oral pain medication being used (Department Exhibit #1, pg 22).
11. Claimant returned to her telemarketing job (sedentary work) on September 27, 2010, eight months post-hospital discharge.
12. Claimant stated at the hearing her wage comes from a combination of commissions and an hourly salary; this usually results in average earnings of [REDACTED] per month.
13. Claimant's orthopedic surgeon completed a Medical Examination Report (DHS-49) on [REDACTED] which indicates claimant had no mental or physical limitations, her fractures were well healed, and he was not prescribing any pain medications or medications of any

kind to claimant by that time (Department Exhibit #1, pgs 23 and 24).

14. Claimant has never been involved in any mental health treatment or counseling and she does not have a psychiatric hospitalization history; however, claimant acknowledges she is frequently depressed/anxious due to the remaining cervical range-of-motion limitations and intermittent neck pain she has experienced since the accident.
15. Claimant admitted these residuals do not impede her ability to sit for long periods while she works, and also, she is fully capable of walking without pain or limitation, especially when she wears tennis shoes because they are more comfortable for her.

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.

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).

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).

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).

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).

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).

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 simply does not qualify for the MA/retro-MA disability coverage she seeks because neither she nor her authorized representative has established the existence of a severe physical or mental impairment which has prevented employability for the requisite duration (12 continuous months).

In fact, the record confirms, claimant returned to telemarketing approximately eight months after her hospital discharge. While she testified she does not work full-time, she earns a significant monthly income and nothing in her medical records establishes she has a condition so severe she could not work full time if she so chose.

Furthermore, claimant is fully independent in all self cares and basic daily living activities. She takes no prescription medications and she is not currently being treated for any diagnosed mental, emotional or cognitive impairments. As such, even if an analysis of the remaining sequential evaluation steps listed above was required (which it is not), claimant would be unsuccessful in establishing a legally disabling condition at Step 4 or Step 5.

Claimant's medical records establish she has the ability to return to any of her past sedentary jobs, including customer service and insurance agent work, as well as telemarketing (Step 4). Lastly, nothing in this record establishes claimant could not perform any number of other sedentary jobs currently existing in the national economy, which is the standard to be applied in disability determination cases.

As such, a disability disallowance would be appropriate at Step 5, as directed by Medical-Vocational Rule 201.27. Therefore, claimant's disputed disability application 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 denial of claimant's April 29, 2010 MA/retro-MA application is AFFIRMED.

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

Date Signed: December 27, 2010

Date Mailed: December 28, 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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