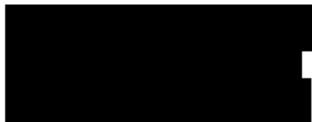
STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-40637
Issue No: 2009
Case No:
Hearing Date:
November 1, 2011
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 November 1, 2011. Claimant personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 13, 2011, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA benefit programs?

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 December 3, 2010, Claimant filed an application for MA and Retro-MA benefits alleging disability.

(2) On March 4, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-severe impairment, pursuant to 20 CFR 416.920(c).

(3) On March 15, 2011, the department caseworker sent Claimant notice that her application was denied.

(4) On June 3, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On August 3, 2011 and December 13, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pages 1-2; Department Exhibit C, pages 1-2).

(6) Claimant has a history of fibromyalgia, chronic pelvic cyst, depression, arthritis, angina, gastroesophageal reflux disease (GERD) and a hyetal hernia.

(7) On September 18, 2010, Claimant was admitted to the hospital in guarded condition for chest pain radiating to the back and neck with tingling in the right arm and nausea. Her EKG did show some flipped T-waives, but was otherwise unremarkable. CBC showed hemoglobin of 10.8, but was otherwise unremarkable. Chest x-ray showed no acute process and mild cardiomegally without congestion, with the possibility of a small hiatal hernia. The 2D echocardiogram showed normal left ventricular ejection fraction, borderline right ventricular dilation and mildly elevated right ventricular systolic pressure. The stress echocardiogram came back negative for evidence of ischemia. She was discharged home on September 19, 2010, with activities as tolerated and instructed to follow-up with primary physician in one week. (Department Exhibit A, pages 16-35).

(8) On October 7, 2010, Claimant was admitted to the hospital for abdominal pain. She had been on Vicodin for the pain, but over the past few days the pain had increased and was accompanied by nausea. Abdomen was soft, tender to palpation in the suprapubic region and also to the right of the umbilicus. Claimant's previous chart was reviewed. Approximately 1 ½ months ago, there were noted changes of a chronic seroma that was there according to the CT. A new CT scan was performed, which showed again sigmoid diverticulosis with no diverticulitis. There was a seroma in the pelvic cavity on the left side measuring 5.5 x 6.4 cm in size, which had increased from 4.9 x 4.72 cm approximately 1 ½ months ago. She had a chronic fluid collection, likely status post a procedure done to prevent adhesion of the dome of her bladder to her epigastrium done in Ohio. She was discharged on October 8, 2010, and instructed to see a surgeon. (Department Exhibit A, pages 36-44).

(9) On November 17, 2010, Claimant was admitted to the hospital in guarded condition for acute abdominal pain with questionable infected pelvic fluid collection and atypical chest pain with upper respiratory infection. She had drains and actually saw her doctor yesterday. She still has increased swelling to the lower and mid abdomen, as well as some persistent pain. She had lysis of adhesions and placement of surgical mesh approximately one year ago. She then had a recent hospitalization for abdominal pain

and was found to have a pelvic fluid collection. She had a drain placed via interventional radiology on October 22, 2010; however, she presented to the emergency department on November 17, 2010, with complaints of worsening abdominal pain associated with some nausea. She then underwent a repeat CT scan, which showed a complex fluid collection in the pelvic with thick septation, measuring 5.7 x 4.1 cm, which is smaller than it was previously. She did undergo surgical exploration on November 19, 2010. Surgery performed included diagnostic laparoscopy with exploratory laparotomy with lysis of adhesions and drainage of a chronic pelvic cyst. Postoperatively, she was admitted to the surgical floor where she had an uneventful recovery. She did have removal of her drain prior to discharge on November 26, 2010, with a diagnosis of intestinal adhesions and a pelvic cyst. (Department Exhibit A, pages 45-84; Department Exhibit B, pages 11-12).

(10) On January 27, 2011, Claimant saw her doctor for a follow-up after her November 19, 2010 surgery. She states she has not had follow-up after her surgery yet because they cancelled her appointment. She has some soreness of her right mid abdomen. An exam of her abdomen revealed three scars, mildly tender with moderate palpation right mid over scar; no erythema or discharge noted at any of the surgery sites. (Department Exhibit B, pages 8-10).

(11) On March 9, 2011, Claimant saw her doctor for lower abdominal pain. She had surgery to remove scar tissue and she is still in pain. She also had shoulder and hip pain. She was diagnosed with abdominal adhesions, herpes zoster and rhinopharyngitis, acute, and prescribed promethazine, lortab and acyclovir. (Department Exhibit B, pages 6-7).

(12) On April 13, 2011, Claimant presented to the emergency department complaining of body and muscle aches with a history of fibromyalgia. She had point tenderness over her rhomboid muscles bilaterally as well as over her scapular area into her shoulders. It was worse on the right side more so than her left. She had full range of motion of her shoulders. She was diagnosed with acute myalgias and chronic pain secondary to fibromyalgia. (Department Exhibit B, pages 3-5).

(13) On June 30, 2011, Claimant was admitted to the hospital in guarded condition for abdominal pain, back pain and nausea. She was seen in her primary physician’s office this date and told she needs to be seen for possible pancreatitis. She is noted to have a complex medical history which includes fibromyalgia. She exhibits distension. This bloating has been occurring intermittently over the last month. It began with excruciating abdominal pain last week which she described as quite diffuse; however, worse in her bilateral upper quadrants with radiation through to her back. Tenderness is present. Tender bilateral upper

quadrants right greater than left sounds were present. A CT and a pelvis IV and p.o. contrast showed an 8.5 by 6.5 cm fluid collection within the pelvis but no other clear abnormalities. She underwent a successful CT-guided placement of drainage catheter within a recurrent pelvic cyst. She was discharged on July 3, 2011. (Claimant Exhibit A, pages 13-32).

(14) On August 9, 2011, Claimant was admitted to the hospital in guarded condition for abdominal pain. She was known to have chronic abdominal pain and a history of multiple abdominal surgeries. She had surgery in November 2010, since then she had a fluid collection in her abdomen. She underwent fluid drainage with CT guidance on 6/30/11 with a JP tube connected to the fluid site. Since then, she has been in the emergency room five times. The pain is 10/10 and increases when clothes rub on the JP tube. Vicodin usually reduces the pain but not in this episode. The pain is associated with abdominal distention, nausea and diarrhea. An ultrasound showed a complex fluid collection in the pelvis at the midline in the left adnexal region measuring 5.0 x 1.7 x 2.6 cm, which was minimally larger compared to the prior examination 10 days ago and the surgical drain tube is seen within the area. This may present residual phlegmonous changes of her known abscess or recurrence of abscess. It is possible this area of concern in the pelvis may be a phlegmom and not amenable to drainage. Sigmoid diverticulosis noted. She initially underwent lysis of adhesions and placement of a surgical mesh at Ohio State University in 2009. She was treated postoperatively for abdominal pain and found to have fluid collection at that time. She underwent initial drainage per interventional radiology in October of 2010. However, she continued with abdominal pain and complex fluid collection. She thus underwent surgical exploration in November 2010. Surgery performed included a diagnostic laparoscopy, exploratory laparotomy with lysis of adhesions, and drainage of a chronic pelvic cyst. Since that time she has had multiple presentations and readmissions for the same. She has had multiple drain insertions and manipulations for this chronic pelvic fluid collection. She was discharged on August 11, 2011. (Claimant Exhibit A, pages 1-12).

(15) At the time of the hearing, Claimant was 49 years old with an [redacted] [redacted] birth date; was 5'0" in height and weighed 159 pounds.

(16) Claimant is a high school graduate. Her work history includes waitressing and providing day care.

(17) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

Under the Medicaid (MA) program:

> "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).

In Claimant's case, the ongoing pain and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her 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 <u>not</u> 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).

Claimant has not been employed since 2006; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical limitations upon her ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings that Claimant cannot return to her past relevant work because the rigors of working as a waitress and daycare provider are completely outside the scope of her physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her December 3, 2010 MA/Retro-MA application cannot be upheld.

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 is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's December 3, 2010 MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in January 2014, unless her Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 1/3/12

Date Mailed: 1/3/12

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.

VLA/ds