

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-75539
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 31, 2013
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 31, 2013. Claimant was represented by [REDACTED] & [REDACTED]. Claimant personally appeared and testified, along with her boyfriend, [REDACTED]. Her friend, [REDACTED] provided interpretation for both witnesses. [REDACTED] was the department witness.

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 April 24, 2013, 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 Emergency Services Medicaid (ESOMA) benefit program?

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 March 8, 2012, Claimant filed an application for ESOMA alleging disability.
- (2) On June 14, 2012, the Medical Review Team (MRT) denied Claimant's application for MA.
- (3) On June 19, 2012, the department case worker sent Claimant notice that her application was denied.

- (4) On September 5, 2012, Claimant's Authorized Hearing Representative (AHR) filed a request for a hearing to contest the department's negative action.
- (5) On September 21, 2012 and April 24, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled.
- (6) Claimant alleges as disabling impairments: aneurysm, learning problems, decrease in energy.
- (7) At the time of the hearing, Claimant was 39 years old with a September 7, 1973 birth date; was 5'0" in height and weighed 149 pounds.
- (8) Claimant is not a citizen and is only eligible for ESO MA.
- (9) Claimant received little education in Mexico (about the equivalent of 2nd grade), does not speak or read English, and can perform only very basic math. Claimant has worked part-time as a cook, cashier and dishwasher for short periods of time.
- (10) The claimant underwent a craniotomy for a left-sided hemorrhage on March 7, 2012. She had problems with dysphagia, left hemiparesis and left neglect. She continues to have problems with abnormality of gait, left-sided hemiparesis, shoulder pain, fatigue and headaches, even after completing physical therapy.
- (11) Claimant is unable to cook, grocery shop, do yard work, and do most housekeeping duties. Claimant's credible testimony stated that she must use a shower chair and needs help from her boyfriend to dress. She is unable to hold anything in her left hand, even a glass, as it is weak and numb. She experiences daily pain, numbness and weakness on the left side.

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 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).

Claimant is not employed; 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 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. Claimant is found to meet listing 11.04 "Central Nervous System Vascular Accident". Claimant is more than three months post-vascular accident and still has significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, gait and station. The claimant still suffers an abnormality of gait due to the left-sided problems with her left leg/foot. Furthermore, she has severe numbness, pain and tingling in her left arm/hand/fingers that is so severe that she is unable to grip/grasp even a glass. Thus, claimant is found to meet this listing.

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 ESO MA eligibility purposes.

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

1. The department shall process Claimant's March 8, 2012 ESO MA application, and shall award her all the benefits she may be entitled to receive, as long as claimant meets all non-medical eligibility factors.

2. The department shall review Claimant's medical condition for improvement in July, 2014.

/s/

Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 15, 2013

Date Mailed: July 15, 2013

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing MAY be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration MAY be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

SLM/hj

cc:

