

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-008674
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: September 25, 2014
County: Lenawee

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 25, 2014, from Lansing, Michigan. Claimant is deceased as of July 8, 2014. Participants on behalf of Claimant included prior authorized hearings representative [REDACTED].

ISSUE

Whether the authorized hearings representative is entitled to continue to represent and assist with Claimant's Medical Assistance (MA-P) application?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. On March 13, 2014, Claimant submitted an application for Medical Assistance and retroactive Medical Assistance based upon disability.
2. On April 30, 2014, the Medical Review Team denied Claimant's application stating that Claimant's impairments lacked duration.
3. On May 6, 2014, the Department caseworker sent Claimant notice that her application was denied.
4. On July 8, 2014, Claimant died. A certificate of death was issued July 30, 2014 by the County of Washtenaw, Exhibit A3.
5. On August 5, 2014, Claimant's authorized hearings representative, through her spouse, filed a request for a hearing to contest the Department's negative action.
6. Claimant's [REDACTED] signed the Authorization to Represent on [REDACTED].

7. Before she died, Claimant was a [REDACTED]-year-old [REDACTED] whose date of birth was [REDACTED]. She [REDACTED].

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act. 42 USC 1397 and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Bridges Policy Glossary (“BPG”).

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) an opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2)

An authorization to represent a person may be revoked at any time by the person who gave the authorization. When the person who gave the authorization dies, the authorization ends at the time of the death. A dead person can neither give nor revoke, nor affirm authorization. There is no such thing as authorization to act for a dead person. After death, the person does not exist as a legal entity so no one can represent the person. This is Michigan law, MCL 700.497 and MCL 700.5504.

An estate of a dead person may be created to handle the remaining business or financial concerns that were outstanding at the time of the person’s death. Only a probate court can create a decedent’s estate. The court will also appoint someone to act as a personal representative of the estate. For the Medicaid program only, a widow or widower may act as a representative on the Medicaid plan without probate court authorization. In the instant case, Claimant’s widowed spouse signed the Authorization to Represent on [REDACTED].

Department policy dictates that an authorized representative is a person who applies for assistance on behalf of a Claimant or otherwise acts on his or her behalf. PAM, Item 110, p. 7. An authorized representative is not the same as an authorized hearings representative. The authorized representative assumes all the responsibilities of a Claimant.

An authorized hearings representative is the person who stands in for or represents the Claimant in the hearings process and has the legal right to do so. This right comes from one of the following sources:

- . written authorization, signed by the Claimant, giving the person authority to act for the Claimant in the hearings process.
- . court appointment as a guardian or conservator
- . the representative status as a legal parent of a minor child
- . the representative status of an attorney at law for the Claimant, and

For MA only:

- . the representative status as the Claimant's spouse or the deceased Claimant's widow or widower, only when no one else has authority to represent the Claimant's interests in the hearings process. An authorized hearing representative has no right to a hearing, but rather exercises the Claimant's right. Someone who assists, but does not stand in for or represent the Claimant in the hearings process need not be an authorized hearing representative. Stands in for means the authorized hearing representative does whatever the Claimant could do if the Claimant were not represented. (BPG Glossary, p. 4)

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 Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant 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 Claimant'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 Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the Claimant 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 Claimant are 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 is deceased. Claimant is not disqualified from receiving disability at Step 1. [REDACTED]

The objective medical evidence on the record indicates that the medical examination report discharge summary of [REDACTED] indicates that Claimant was diagnosed with acute respiratory failure due to chronic obstructive pulmonary disease exacerbation. Claimant ran out of for nebulizer breathing treatments and began feeling hypoxic. She was given breathing treatments, steroids and was given antibiotics and admitted for further evaluation and management. She responded well to antibiotics. She wanted to go home. She was feeling much better with minimal wheezing and coughing improved. She was given prescriptions. She was given a resting, walking test and the extra requirements were noted and she was given oxygen for home use. She was discharged on [REDACTED]. She was asked to avoid smoking, pages 18-19.

Claimant was admitted with respiratory failure, chronic obstructive pulmonary disease, asthma, hypertension, deep vein thrombosis prophylaxis and a history of tobacco abuse. She [REDACTED]. Medical examination report of [REDACTED] indicates that Claimant has symptomatic anemia and was given a blood transfusion, page 45. On physical examination she had audible wheezing was in no other acute distress, page 21. She had a history of hypertension, asthma and chronic obstructive pulmonary disease. She had an asthma exacerbation, page 52

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. There is sufficient objective clinical medical evidence in the record that Claimant suffered a severely restrictive physical or mental impairment. Claimant had a long history of chronic obstructive pulmonary disease. Chronic obstructive pulmonary disease was one of the factors in her death. Thus, Claimant had a severely restrictive physical impairment that lasted or was expected to last for the duration of at least 12 months or could result in death. Claimant is not disqualified from receiving disability at step two.

Social Security administration disability is staying 3.03 Asthma states:

- A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A;

This administrative law judge finds that Claimant met a Social Security listing 3.03 Asthma even in light of the fact that she continued to smoke and had to be counseled for smoking cessation in [REDACTED]. Her emphysema, chronic obstructive pulmonary disease and asthma had progressed to the point where it eventually caused her cardiopulmonary arrest and anoxic brain injury resulting in her death.

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 Program as of [REDACTED].

Accordingly, the Department's decision is **REVERSED and**, the Department is **ORDERED** to initiate a review of the [REDACTED] application if it is not already done so, to determine if all other non-medical eligibility criteria are met. The Department shall inform the Claimant's authorized hearings representative of the determination in writing.



Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/6/14

Date Mailed: 10/7/14

LYL/tb

cc:

