

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

IN THE MATTER OF:



Reg. No.: 2014-33667
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 20, 2014
County: Oakland #3

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, an in-person hearing was held on July 10, 2014, from Walled Lake, Michigan. Participants on behalf of Claimant included Claimant and her authorized hearings representative [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist – Hearings Facilitator.

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 September 20, 2013, Claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On November 20, 2013, the Medical Review Team denied Claimant's application stating that Claimant's impairments do not meet duration.
3. On January 22, 2014, the Department caseworker sent Claimant notice that her application was denied.

4. On March 28, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. On May 27 2014, the State Hearing Review Team again denied Claimant's application.
6. Claimant is a [REDACTED]-year-old [REDACTED] whose [REDACTED] Claimant is 5'5" tall and weighs 220 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked in [REDACTED] as an [REDACTED].
8. Claimant alleges as disabling impairments: hypertension, anemia, a burst of appendix, peritonitis, metastatic colon and intestinal cancer.

CONCLUSIONS OF LAW

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 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Claimants have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 combinations 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 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 [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates Claimant testified on the record that she lives with her [REDACTED] in a house and she has no children under 18 she receives Social Security retirement income. She is currently undergoing [REDACTED] and has heartburn and chronic diarrhea. She turned [REDACTED] in [REDACTED] and should have automatically been considered categorically eligible for Medical Assistance under the aged category. The Department is required to determine Claimant's eligibility for Medical Assistance under the aged category once a person turns age 65.

A [REDACTED] dated [REDACTED] indicates that Claimant weighed 104 kg and her blood pressure is 158/88. Her current diagnosis is metastatic colon cancer. The clinical impression is that she is stable and that she can frequently carry less than 10 pounds, occasionally carry 10 pounds and never carry 20 pounds or more. She can stand or walk less than two hours in an eight hour workday. She can use both right upper extremities for simple grasping, reaching and fine manipulating but not pushing or pulling and she cannot use leg controls. She has ongoing [REDACTED] and no mental limitations.

A [REDACTED], medical examination report indicates the Claimant has [REDACTED], benign essential hypertension, and neuropathy and is currently taking chemotherapy. She was 66 inches tall and weighed 213 pounds. Her blood pressure was 120/70, page 6. She can never lift any weight. She can stand or walk less than two hours in an eight hour workday and can sit less than six hours in an eight hour workday. Condition is deteriorating. She cannot use her upper extremities for any repetitive actions and she cannot operate foot or leg controls. Patient is actively

undergoing chemotherapy and has subsequent neuropathy limiting her fine motor skills. She has generalized weakness limiting all activity. She's unable to care for herself. She has limitations in her sustaining concentration and memory and she has experienced memory loss and decreased ability to concentrate increasing over time and while in therapy for her metastatic cancer, page 7. Claimant's [REDACTED] [REDACTED] [REDACTED] is [REDACTED]. She turned [REDACTED] in [REDACTED].

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 suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are corresponding clinical findings that support the reports of symptoms and limitations made by the Claimant. There are laboratory or x-ray findings listed in the file which support Claimant's contention of disability. The clinical impression is that Claimant is deteriorating. This Administrative Law Judge finds that the medical record is sufficient to establish that Claimant has a severely restrictive physical impairment which meets or exceeds 12 months duration requirement.

For these reasons, this Administrative Law Judge finds that Claimant meets her burden of proof at Step 2.

If Claimant is not denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claimant's condition does give rise to a finding that she would meet a statutory listing in the code of federal regulations under section 13.27, [REDACTED].

Claimant has established by the necessary competent, material and substantial evidence on the record that she is disabled for purposes of retroactive Medical Assistance and Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant has established by preponderance of the evidence that she is disabled for purposes of medical assistance and retroactive Medical Assistance under the circumstances.

Accordingly, the Department's decision is **REVERSED**.

The Department is ORDERED to reinstate Claimant September 20, 2013 Medical Assistance application. If Claimant is otherwise eligible for the Department shall open an ongoing Medical Assistance case for Claimant for the months of June 2013 forward in accordance with Department policy.



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

Date Signed: 7/21/14

Date Mailed: 7/25/14

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the Claimant;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

2014-33667/LYL

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LYL/tb

cc:

