

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-11935
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 2009
Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 May 6, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 October 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 23, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 3, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On January 8, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 27, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating impairment was non-severe per 20 CFR 416.920(c).

(6) Claimant provided additional information following the hearing which was forwarded to SHRT for additional review. On July 28, 2009, SHRT once again determined claimant was not disabled as she was capable of performing other work, namely light unskilled work per Vocational Rule 202.20.

(7) Claimant is a 21 year-old woman who date of birth is [REDACTED]. Claimant is 5'2" tall and weighs 114 pounds. Claimant attended 2 years of college towards a paralegal degree, but did not finish. Claimant can read, write and do basic math.

(8) Claimant last worked in December, 2007 as a dishwasher and a waitress, job that lasted her 2 years and that she quit to go to school due to conflict with school schedule.

Claimant attended college up to September, 2008 when she became ill.

(9) Claimant currently lives with her mother who supports her. Claimant does not have a driver's license and never has had one.

(10) Claimant alleges as disabling impairment rectal prolapse and colitis that causes her to have rectal bleeding and diarrhea 10-15 times per day.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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

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 does 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 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 is not engaged in substantial gainful activity and testified that she has not worked since December, 2007. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record consists of records starting in September, 2008, showing claimant was treated in emergency room for abdominal cramping and bleeding. Medical Examination Report of [REDACTED], indicates as claimant's diagnosis lymphocytic colitis.

Claimant was admitted to the hospital on [REDACTED], with severe ulcerative colitis and anxiety with hair bending and hair breaking behavior. Discharge Summary states that the

claimant had been battling ulcerative colitis for the last several years. Claimant's difficulty is that she has no insurance and no real income to afford most of the medications that she has been told she needs. At discharge on [REDACTED], claimant's abdominal pain and diarrhea had improved, but she continues to have loose stools with occasional blood 4-6 times per day.

Claimant was again admitted to the hospital on [REDACTED], with admitting diagnosis of chronic abdominal pain caused by colitis of some form including ulcerative colitis, Crohn's disease or other nonspecific colitis, proctosigmoid ulcer, and significant anxiety and panic disorder with behavioral manifestation by breaking of hair strands. Claimant presented with "miserable" abdominal pain which eventually improved with medications, and chronic bloody diarrhea. It was noted that the claimant recently underwent a colonoscopy which revealed a proctosigmoid ulcer that was fairly large according to claimant's description.

Claimant was finding herself unable to go to school and unable to work because of the severity of her pain and the frequent stools that she has. Claimant had significant weakness today and has this intermittently when her symptoms worsen. It was also noted that the claimant underwent some behavioral therapy sometimes in her late teens and found ways of dealing with her anxiety and stress disorder without picking and pulling at her hair, but she still has a good amount of her scalp that has broken hair strands. Claimant's prognosis was guarded in view of the chronic nature of her illness and obstacles in obtaining good care for her, namely the lack of insurance. Final diagnosis was that of chronic abdominal pain believed to be secondary to rectosigmoid ulcer, chronic rectosigmoid ulcer, nonhealing of at least 4-5 months duration, depression, anxiety and panic disorder, and pathologically strong impulse that causes a person to persistently rub or pull out hair.

Claimant was seen by a doctor on [REDACTED], due to complaints of diarrhea, cramping and rectal ulcer which began years ago. Claimant appeared weak and was given medications for pain and nausea.

Report of [REDACTED], from Colon and Rectal Surgery doctor states that on examination the claimant is thin with soft, nontender and nondistended abdomen. External anal exam is normal, but rigid proctoscopy to 15 cm. revealed a small distal anterior ulceration within the rectum. Impression was that of a solitary rectal ulcer, these are typically associated with rectal prolapse, and given claimant's account of feeling something bulging out with her bowel movements it certainly is very suspicious for the possibility of rectal prolapse. If rectal prolapse is proven, recommendation is that of surgery.

Medical Examination Report of [REDACTED], states that the claimant has ulcerative colitis and ulcerative proctitis, that a colonoscopy revealed a rectal ulcer, but that the claimant has no physical or mental limitations.

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. While the medical examination report of [REDACTED], states that she has no limitations, it is clear from the information provided that claimant's condition would have a severe affect on her ability to work. Claimant's credible hearing testimony is that she has been in the emergency room 21 times in the last 7 months due to having stomach cramps and bloody diarrhea, that she is in constant stomach pain, and that she has diarrhea at times 10-15 times per day.

There is also evidence in the record indicating that claimant suffers mental limitation. Medical record indicates that the claimant suffers from anxiety and depression that manifests itself in her pulling her hair, that she has done so extensively in the past due to a past traumatic

event, and that she still has loss of hair. For these reasons, this Administrative Law Judge finds that claimant has met her burden of proof at Step 2.

The analysis proceeds to Step 3 where 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).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge concludes that the claimant cannot perform her past relevant work. Claimant's past relevant work was as a dishwasher and a waitress, jobs she cannot perform if she is having diarrhea and stomach pain on a daily basis. Finding that the claimant is unable to perform work which she has engaged in in the past can therefore be reached and the analysis proceeds to Step 5.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted sufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment. While the claimant may be physically able to perform other work (i.e. lift, walk, stand, etc)., she cannot do so with her impairment, i.e. having bloody diarrhea on a daily basis for which she has had to visit the

emergency room 21 times in the last 7 months. Claimant's medical record indicates that her condition could possibly be treated and improved with additional medical procedures and medications, but the claimant cannot afford any of these and does not have insurance to pay for them. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant is incapable of performing other work with her present condition.

In conclusion, the claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed MA, retro MA, and SDA October 31, 2008, and grant her any such benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).

2. If the claimant meets all eligibility requirements, review claimant's medical condition in September, 2010, at which time all treatment records are to be obtained for such review. Claimant is advised that she must comply with all treatment(s) recommended by medical professionals, or her future benefits may be terminated if she fails to do so.

3. Notify the claimant in writing of this determination.

SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 15, 2009

Date Mailed: September 16, 2009

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.

IR [REDACTED]

cc:

[REDACTED]