

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: 2009-19431
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 9, 2009
Ingham 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 June 9, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her sister [REDACTED]. Claimant was represented by [REDACTED], [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive MA 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 December 3, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 13, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On February 2, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On February 25, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 4, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating impairment lacks duration per 20 CFR 416.909. SHRT also denied SDA application saying that the claimant's impairment(s) would not preclude all types of work for 90 days.

(6) Claimant provided additional medical information following the hearing that was forwarded to SHRT for review. On August 13, 2009 SHRT once again determined that the claimant was not disabled, as she was capable of performing other work, namely light unskilled work per Vocational Rule 202.14.

(7) Claimant is a 50 year old woman whose birth date is [REDACTED]. Claimant is 5' tall and weighs 113 pounds. Claimant completed 12th grade and LPN training. Claimant can read, write and do basic math.

(8) Claimant states that she last worked on October 31, 2008 at [REDACTED], job she had for couple of months until she was injured on the job. Claimant has also worked at a living center from 2006 to 2008, at a nursing/rehab center from 2004 to

2006, at a doctor's office, and has been an LPN for 26 years. Claimant feels she cannot do any type of a job because she is in constant pain that has caused her depression and anxiety.

(9) Claimant lives alone in a house which is being foreclosed on, receives some help from her sister and gets food stamps. Claimant has a driver's license and drives 1-2 times per month if she has to.

(10) Claimant alleges as disabling impairments: back injury-fracture of L5, back pain, pain in her legs, osteoporosis, severe depression and anxiety.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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 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 he has not worked since October, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes an MRI of claimant’s lumbar spine of November 4, 2008 due to low back pain resulting from a lifting injury. Impression is that of acute compression fracture of L5 with bone marrow edema at the superior end plate, mild central canal stenosis at L4/5 due to degenerative changes, and small left paracentral disc protrusions at T12/L1 which indents the thecal sac but does not result in significant central canal stenosis.

██████████ office visit notes from ██████████ state that the claimant is 5’ tall and weighs 116 lbs. Claimant is well developed, well nourished, and in no apparent distress. Claimant had grossly normal tone and muscle strength, but her gait was slowed, she had decreased range of motion in her back and pain with motion of the back. Claimant also has spasms in her back muscles, is very rigid, and movement was causing her tremendous amount of pain. Claimant had increased pain with straight leg maneuver more on the right than left. Claimant’s neurologic exam was normal. Claimant’s mental status was alert and she was oriented x 3, and had appropriate affect and demeanor. Assessment was that of closed fracture of lumbar vertebrae and limb pain. Claimant was currently off work until next follow-up, and she

was not going to be able to work in this much pain and certainly with the need for more medication. Claimant was warned by the doctor that he did not want her to go home and sit around and smoke cigarettes, but would like to get her in some physical therapy when she is feeling a bit better.

Claimant was seen again on December 1, 2008 and was taking Vicodin, Klonopin, and Flexeril for pain. Claimant also was wearing a brace. Claimant reported losing her job and that she had restarted smoking, and that her bone density test showed she has osteoporosis. Claimant continued to have decreased ROM in the back and pain with ROM of the back. Claimant was advised to see her primary care doctor and start treatment for osteoporosis, and to stop smoking.

Medical Needs form completed on December 15, 2008 by the neurosurgeon indicates that the claimant is off work until February 9, 2009.

February 5, 2009 office visit notes from the neurosurgeon indicate that the claimant is still having the right sciatica that she has had all along since the accident. Claimant stated she has had a right sciatica with each pregnancy that went away following delivery, but returned after she lifted her motorcycle in October, 2008. Claimant reported that her back pain has improved somewhat, but the right sciatica goes all the way down the side of the right leg and has been awful, and she is taking medication around the clock to try to keep it under control. Claimant's gait was slowed, she had grossly normal tone and muscle strength, decreased ROM in the back and pain with ROM of the back, but no laxity or subluxation of any joints. No weakness on the right side could be detected but the claimant did have a limp and was obviously in pain. Claimant's neurologic exam was normal, as was her mental status, and she denied having anxiety, depression and sleep disturbances. Claimant discussed the fact that she is certainly in too much pain to do any work and it is impossible to say how long this was going to

last. Further exams were ordered and claimant was given Neurontin also to take during the day to help her with the leg pain.

May 28, 2009 office visit notes quote the claimant as saying she continues to have right leg pain along with back pain. Claimant is not taking any prescribed pain medications. Claimant is having severe right sciatica that goes all the way down to her foot, and she has numbness and tingling and weakness as well. This has been going on since her snowmobiling accident back in November. Claimant denied having anxiety, depression and sleep disturbances. Upon examination claimant appeared to be in pain, her gait was affected by a right leg limp and slowed, and she had decreased ROM in the back along with pain with ROM of the back. Claimant's most recent MRI of her lumbar spine shows stenosis at the 45 level, possibly lateral recess compressing the L5 nerve root. There is also a small compression fracture and degeneration of 5 disc. Possible discectomy was discussed with the goal of decompressing the L5 nerve root. Claimant wished to proceed with the surgery.

June 12, 2009 surgery report states claimant underwent surgery for right L5-S1 decompressive laminotomy, medial facetectomy only, and decompression of L5 nerve root.

Medical Examination Report for an exam of June 22, 2009 indicates as claimant's current diagnosis severe osteoporosis, compression of L5, tachycardia, anxiety and depression. Claimant looked uncomfortable and sad, had difficulty getting off the exam table, and had slow gait with a limp. Claimant's condition was marked as stable, but she could never lift/carry any amount of weight, and could stand/walk or sit less than 2 hours in an 8-hour work day. Claimant could not use either of her hands/arms for reaching or pushing/pulling, and she could not operate foot/leg controls with either leg/foot. Claimant could not meet her needs in the home and it was noted she lives with her sister who helps her.

July 13, 2009 neurosurgeon office visit notes state that the claimant's leg pain is gone since surgery, but she still has a lot of back pain for which she is taking [REDACTED]. Severe osteoporosis is stated as the reason for the lumbar compression fracture she suffered when she attempted to lift a motorcycle. While the surgery was able to give the claimant some relief of her leg pain by decompressing the nerve root, no fix for her back pain is seen. Some physical therapy could be helpful, but the claimant does not have insurance to cover it. The low back pain has become quite significant for the claimant and has not settled down. Exam reveals that the claimant still has limited range of motion of her back, however she does not have any sensory loss in the lower extremities and no weakness, and is getting around without assistance. Conclusion is that the neurosurgeon does not see the claimant being capable of going back to work, as she cannot do anything physical due to severe low back pain which limits her ability to stand or walk. Claimant should be considered disabled as without insurance she cannot receive any physical medicine rehabilitation services which may give her relief from back pain.

Claimant was seen by Community Mental Health (CMH) on May 21, 2009 based on an emergency referral. Claimant was suffering from severe depression and having suicidal thoughts. Medications were prescribed to the claimant and she had a plan to stay with her sister over the weekend. An appointment was scheduled and claimant seen by a therapist on June 4, 2009. The report for this visit describes claimant's medical condition and financial situation that has resulted in her depression. Claimant was given a diagnosis of Major Depressive Disorder, Recurrent. Claimant was taking psychiatric medication for anxiety and depression due to her worries about her uncertain future.

November 13, 2008 bone density test of claimant's left hip and lumbar spine indicates that the claimant has osteoporosis. Exercise as tolerated, calcium with vitamin D and smoking cessation was recommended, and medical therapy should be considered.

Claimant's neurosurgeon has indicated that claimant has severe back pain and that such pain may be helped by further treatment, however claimant has no insurance to cover such treatment. When determining disability, the federal regulations require several factors to be considered pertaining to pain, 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). 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.

It is noted that the evidence in the record pertaining to claimant's mental limitations is scant and consists of only an initial visit to CMH in May, 2009 and a follow up visit of June, 2009. Claimant is understandably depressed over her medical and financial situation, but the information provided does not give rise to the conclusion that she has severe mental limitations. It is noted that no mental health visits documentation were provided after the claimant was seen in June, 2009, even though additional evidence was not received by this Administrative Law Judge until August 6, 2009.

Due to claimant's documented back issues and pain, this Administrative Law Judge finds that claimant has met her burden of proof at Step 2. Analysis continues to Step 3.

At Step 3 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, the Administrative Law Judge gives great weight to neurosurgeon's assessment that the claimant cannot perform her nursing job duties, as she cannot do any lifting. Claimant is therefore not disqualified at Step 4.

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 [REDACTED], published by the [REDACTED]
[REDACTED]... 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. Claimant's neurosurgeon has rendered a persuasive evaluation of her ability to work, that being that she is not able to work at the present time due to her back issues and severe pain she continues to have on a daily basis. The neurosurgeon is of the opinion that the claimant may be helped with her back pain through

rehabilitative services, however she has no insurance or funds to pay for such services.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has no residual functional capacity to perform other work. Even if the claimant was to be said to have the physical ability to perform only sedentary work, it is apparent that her constant back pain is causing her mental issues and affecting her ability to concentrate and function. Such ability would be needed even in sedentary work. Claimant's disability has lasted for a period of 12 months and will continue if she is unable to get the needed treatment.

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 Bridges 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. BEM, Item 261, page 1. Because the claimant meets 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 meets the disability criteria for State Disability Assistance benefits.

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 MA, retroactive MA and SDA application.

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

1. Process claimant's disputed December 3, 2008 MA and SDA application.
2. Request any additional information needed from the claimant to complete application processing, in accordance with departmental policy.
3. If the claimant meets all financial and non-financial eligibility requirements, grant her all MA and SDA benefits she is entitled to receive, based on December 3, 2008 application date.
4. Inform the claimant in writing of department's determination.
5. Review claimant's ongoing eligibility in April, 2011, at which time updated medical treatment records are to be obtained. Claimant is advised that she must follow all recommended treatment, or her MA and SDA continuing eligibility could end.

SO ORDERED.

/s/

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

Date Signed: April 7, 2010

Date Mailed: April 8, 2010

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.

cc:

