

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg No. 200920228
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: July 9, 2009
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 9, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

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

1. November 13, 2008, claimant applied for MA, retroactive MA, and State Disability Assistance (SDA)..
2. January 23, 2009, the Medical Review Team (MRT) denied claimant's application for MA and retroactive MA. Department Exhibit A.
3. February 27, 2009, the department sent claimant written notice that the MA application was denied.
4. March 6, 2009, the department received claimant's timely request for hearing.

5. May 14, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.
6. July 9, 2009, the telephone hearing was held.
7. Claimant asserts disability based on impairments caused by a bad back, GERD, and bipolar disorder.
8. Claimant testified at hearing. Claimant is 40 years old, 4'11" tall, and weighs 143 pounds. Claimant completed eighth grade and is able to read and write but has poor math skills. Claimant has a driver's license and is able to drive but has pain in her legs and back. Claimant cares for her needs at home.
9. Claimant's past relevant employment has been as a maid.
10. The Social Security Administration (SSA) denied claimant's application for disability benefits. May 17, 2010, the SSA Administrative Law Judge issued an unfavorable decision to claimant upholding that denial. BRIDGES SOLQ Report, 8-19-2010.
11. February 6, 2008, claimant visited her physician complaining of low back pain. Physical exam revealed claimant to be somewhat limping, but no sign of foot drop. There is no sign of muscle atrophy and at this time she is walking unassisted. Doctor indicates claimant has a history of L4-L5 disc herniation, chronic back pain, and polydipsia. Department Exhibit A, pg 85. May 15, 2008, claimant's pain clinic physician wrote her family physician a letter that indicated her most recent MRI from February 2008 shows a broad based disc herniation at L3-4 with bilateral facet hypertrophy and mild canal stenosis and mild to moderate foraminal stenosis but no obvious involvement of nerve roots. At L4-5, there is a broad based slightly prominent midline posterior disc herniation with bilateral facet hypertrophy and mild canal stenosis and mild to moderate bilateral foraminal stenosis with no compromise of the nerve roots. At L5-S1, there are broad based disc bulges without obvious compromise of the exiting nerve roots, and spinal canal mild to moderate foraminal stenosis. Claimant is being treated with epidural steroid injections. Department Exhibit A, pgs 31-32.
12. October 17, 2008, claimant underwent an independent physical examination and a narrative report was prepared that states in pertinent part that there is no evidence of joint laxity, crepitus, or effusion. Grip strength remains intact. Dexterity is unimpaired.

Patient had mild difficulty getting on and off the exam table, mild difficulty heel and toe walking, mild difficulty squatting, mild difficulty standing on the right leg, and mild difficulty standing on the left leg. She had tenderness over the left sacroiliac joint. In the lumbar spine flexion was reduced by 20 degrees. All other joints had normal range of motion. Cranial nerves were intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes are 2+ and symmetrical. Romberg testing is negative. Patient walks with a moderate left limp without the use of assistive device. Doctor opines that claimant has lower back pain and most of her symptoms appear to be in the left S1 joint. Doctor does not find any reproducible regular symptoms. She is on pain management. A cane would appear helpful with distances over 200 yards. Department Exhibit A, pgs 12-17.

13. November 4, 2008, claimant underwent an independent psychological exam and a narrative report was prepared that indicates AXIS I diagnoses of major depressive disorder, recurrent, moderate. The report indicated that at exam, claimant appeared to be a little shaky and nervous. She appeared to be in some pain and uncomfortable when sitting. She maintained appropriate eye contact. Client appeared to be oriented to reality during the course of the evaluation. She displayed low self esteem. Stream of mental activity was logical and organized. She may have been a little vague at time. Speech was soft at times. Claimant reported that she sees things, shadows or thinks people are talking to her and they are not. She reported blackout moments and at one time stabbed her husband with a knife a couple of times. She prefers to be in a room by herself because she feels safer. Claimant reported being really depressed. She has twitching spells and a lot of stress. The report indicates claimant is oriented x 3. Claimant's cognitive functions appear to be generally within normal limits. GAF was assessed at 47. Department Exhibit A, pgs 18-22.

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 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 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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has multiple bulging discs in her lumbar spine. She has pain symptoms, mostly in her right sacroiliac joint. She is undergoing pain treatment, but continues to have pain in that area and walks with a limp. Doctor opines she should use a cane for walking long distances. The objective medical evidence of record indicates that claimant has major depressive disorder, recurrent and moderate. Claimant is oriented x 3 and cognitive functions are generally within normal limits with the exception that claimant feels very depressed. GAF was assessed at 47, indicative of serious symptoms or impairment. Finding of Fact 10-13; DSM IV, 1994 R. At hearing, claimant credibly testified to symptoms of depression, crying

jags, feeling withdrawn, having a bad temper, and feeling suicidal. The record contains no objective medical evidence to establish that claimant's depression is of long duration. Department Exhibit A. Claimant did receive an unfavorable decision from the SSA regarding her disability. Finding of Fact 10.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe physical and/or mental impairments that have lasted or are expected to last 12 months or more and prevent all employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law. Finding of Fact 10.

At Step 4, claimant's past relevant employment has been as a maid. See discussion at Step 2 above. Finding of Fact 9-13. Claimant's back condition would appear to make it difficult for her to perform the duties required by her employment as a maid.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has physical impairments that have lasted or are expected to last 12 months or more and prevent her from performing the duties required by her past relevant employment for 12 months or more. Accordingly, claimant is not disqualified from receiving disability at Step 4.

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).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least sedentary, unskilled work activities.. Considering claimant's vocational profile (younger individual, limited education, and history of unskilled work) and relying on Vocational Rule 201.24, claimant is not disabled. Accordingly, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not meet the disability requirements for Medical Assistance based on disability. The department properly denied her application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/S/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 30, 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.

JAB/ db

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