

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: 2009-22986
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 15, 2009
Saginaw 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 July 15, 2009. Claimant personally appeared and testified.

ISSUE

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

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 January 27, 2009, claimant filed an application for Medical Assistance and State Disability Assistance (SDA) benefits alleging disability.

(2) On March 3, 2009, the Medical Review Team denied claimant's MA application stating that claimant's impairment(s) lack duration of 12 months per 20 CFR 416.909, but approved claimant's SDA application with a review date of May, 2009.

(3) On March 24, 2009, the department caseworker sent claimant notice that her MA application was denied.

(4) On April 7, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 4, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating impairment lacks duration per 20 CFR 416.909.

(6) Claimant submitted additional medical evidence following the hearing which was forwarded to SHRT for review. On July 22, 2009, SHRT once again denied claimant's MA application due to lack of duration, and noting that claimant's conditions are medically managed and improving.

(7) Claimant is a 59 year-old woman who is 5'4" tall and weighs 190 pounds. Claimant completed high school and few college secretarial courses, and can read, write and do basic math.

(8) Claimant last worked in November, 2008 as a school district bus assistant for disabled children riding on the bus and helping lift the children, etc. Claimant had this job for 7 years until she fell in November, 2008 and was terminated due to being in the hospital. Claimant is fighting a Worker's Compensation claim that was denied. Claimant also worked for the U.S. Post Office as a substitute mail carrier for 7 years from 1994 to 2001.

(9) Claimant alleges as disabling impairments: fibromyalgia, lupus, spinal injury, sleep apnea, osteoarthritis, bursitis, and rotator cuff tear.

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).

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 November, 2008. 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 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 a Pain Management center consultation of [REDACTED], for claimant's complaint of lower back pain which is made worse by sitting and standing too long and walking too far. Claimant injured her back while working as an assistant to special needs children on a school bus. An MRI of [REDACTED], is noted that shows significant acquired spinal canal stenosis at the L4-L5 level with narrowing of the central canal. Claimant's diagnoses are chronic back pain and left lower extremity pain secondary to work related injury, lupus, fibromyalgia and depression.

A [REDACTED], Operative Report indicates as claimant's diagnosis chronic low back pain and left lower extremity pain, secondary to disc bulge at L4-L5, as well as multi-level severe spinal stenosis. Claimant underwent a lumbar epidural steroid block to relieve her pain.

[REDACTED], Progress Note from the surgery center indicates that the claimant has not been seen since December, 2008 because she developed a urinary tract infection with kidney stones requiring hospitalization and IV antibiotics. Claimant continues with lower back pain. On examination of her lower back, claimant has some midline tenderness but no paraspinal spasms are noted.

[REDACTED], follow-up visit note from [REDACTED] and [REDACTED] [REDACTED] indicates that claimant suffers from inflammatory joint disease related to lupus, fibromyalgia syndrome, rotator cuff tendonopathy, bursitis, and osteoarthritis of the knees.

Additional information submitted by the claimant following the hearing includes a [REDACTED], letter from claimant's doctor in support of claimant's need for medical and prescription coverage. Letter indicates that the claimant has lupus diagnosed in December, 1992 that will require indefinite Rheumatologic surveillance and medications. Claimant is also on several medications to try and relieve the symptoms of lupus and fibromyalgia, and these

medications could cause damage to her liver and kidneys if not monitored closely with monthly labs. Claimant also periodically needs to receive corticosteroid injections in her shoulders, hips and knees for her condition not to be exacerbated.

Claimant also provided a progress note report from [REDACTED] noting significant spinal stenosis at L4-5 level of her back. Surgical intervention was discussed. On [REDACTED], claimant reported continued back pain radiating up the lower thoracic region which is improved with lying down. Claimant had balance complaints and is wearing her back brace. Examination of claimant's lumbar area shows tenderness with limitation of range of motion.

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. Furthermore, evidence shows that the claimant has met the impairment duration as her impairments have lasted or are expected to last 12 months or more. The Administrative Law Judge finds that claimant has met her evidentiary 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, the Administrative Law Judge finds that the claimant does not have the ability to perform past relevant work. Claimant's past relevant work was attending to disabled children

on a school bus, job that involved physical movement, lifting, etc. Claimant was also a postal carrier in the past, job that would involve significant amount of driving and/or walking.

Claimant's impairments would prevent her from performing either type of job. Finding that the claimant is unable to perform work which she has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability 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 *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 could only perform sedentary work at best. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is age 59), with high school education or more that does not provide for direct entry into skilled work, and an unskilled work history who can perform only sedentary work is considered disabled pursuant to Medical-Vocational Rule 201.04.

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 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 does meet the disability criteria for State Disability Assistance benefits. Such benefits were approved by Medical Review Team with a review date of May, 2009. However, hearing testimony indicates that claimant's SDA was terminated due to excess income from disability insurance benefits claimant started receiving from her employer.

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 and retroactive MA application.

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

1. Process claimant's disputed January 27, 2009 MA and retro MA application.
2. Grant the claimant any and all MA benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
3. Notify the claimant of department's determination.
4. If MA is approved, department shall review claimant's continued MA eligibility in November, 2010, at which time updated medical records are to be obtained.

SO ORDERED.

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

Date Signed: November 4, 2009

Date Mailed: November 10, 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.

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