

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: 2009-24798
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 23, 2009
St. Clair 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 23, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her friend [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 November 17, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 2, 2008, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work.

(3) On December 9, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On December 30, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 17, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating she was capable of past relevant work, that being telephone operator, sedentary work as performed in the national economy.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On November 3, 2009 SHRT once again determined that the claimant was not disabled, as she retains the ability to remain gainfully employed in the same occupations that she has held in the past, telephone operator, sales clerk, retail sales manager, insurance claims representative and claims manager.

(7) Claimant is a 46 year old woman who is 5'1" tall and weighs 240 pounds. Claimant completed 12th grade and can read, write and do basic math.

(8) Claimant states that she last worked in July, 2008 at a clothing store, job she held since April, 2007 and that ended when a mannequin fell on her and injured her neck. Claimant received Workers Compensation until September, 2008 and has an attorney appealing the cessation of these benefits. Claimant also applied for UCB but was denied as her doctor had not released her for work. Claimant also worked as a telephone operator from 2000 to 2003, child

care aid from 1998 to 1999, as an insurance claims representative in 1997, and as a sales representative and assistant manager of her own insurance business from 1992 to 1994.

(9) Claimant currently lives in an apartment funded by Section 8 housing assistance and receives food stamps. Claimant has a driver's license and drives minimally, cooks simple meals, grocery shops with help if she is having a bad day, reads and visits with friends.

(10) Claimant alleges as disabling impairments: neck and back pain from the accident at work, rheumatoid arthritis, fibromyalgia, glaucoma-like eye condition, scoliosis, degenerative disc disease, and mild depression due to her physical condition.

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 she has not worked since July, 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 x-ray of claimant’s cervical spine of August 8, 2008 showing loss of the normal lordotic curvature and minimal spondylosis at C3 and C4. The bony structures and disc spaces appear intact. X-ray of claimant’s lumbar spine on the same date showed a slight disc space narrowing between L4-5. The bony structures appear intact. Impression was that of scoliosis and degenerative changes.

MRI of claimant’s lumbar spine of August 15, 2008 shows some mild disc space loss, but no evidence of discal protrusion. There is mild degenerative change in the facets. Impression is that postoperative changes at L4 from what appears to have been a previous left-sided laminectomy.

MRI of claimant’s cervical spine of August 15, 2008 shows mild degenerative disc disease C5/6, C6/7 with a tiny central disc displacement C6/7 causing mild deformity of the thecal sac without cord contact. This extends posteriorly, only approximately 2 mm.

Claimant underwent neuromuscular electrodiagnosis on August 19, 2008. These studies show evidence of subtle changes suggestive of early or low grade nerve root irritation. There was also evidence most suggestive of mild bilateral carpal tunnel syndrome right slightly more

than left with no evidence of cervical radiculopathy, or diffuse peripheral neuropathy noted in the areas examined.

Claimant was examined by an orthopedic surgeon on August 26, 2008, and an independent medical evaluation was completed for Workers' Compensation Division. Claimant described her injury at work on July 16, 2008 that occurred when she was on a ladder and a mannequin fell off, hit her on top of her shoulder, and she grabbed it so it did not land on a customer. Claimant came down the ladder with low back pain, left shoulder pain and pain that goes to both big toes. Claimant did not see a doctor until the next day and that was a chiropractor she has been seeing on and off for years. Claimant was not treating with an orthopaedic or a neurosurgeon, had no injections or therapy. Claimant was using Flexeril and a pain medication prescribed by her family doctor. Claimant has a history of prior lumbar spine surgery back in 1999. She did not have any findings of any neurologic deficits at the time and the MRI suggests no evidence of neurologic compromise, specifically no specific nerve compression, fracture, herniated disc, etc. Examiner felt that the claimant has a sprain/strain scenario relative to the lumbar spine from July, 2008 incident. The same is true for the cervical spine in that there is no evidence of spinal cord or spinal nerve compression on her MRI study. A brief period of therapy, of about four to six weeks, to include ultrasound, heat, Williams' exercises and massage, was suggested. Oral anti-inflammatory medicines were also recommended. Home exercise was recommended for the left shoulder pain. Claimant could work but heavy lifting of more than 15-20 pounds, climbing and repetitive bending were not recommended.

On September 4, 2008 the orthopedic surgeon issued a supplement to his August 26, 2008 report after reviewing additional x-rays. Review indicates that it appears the claimant

sustained a sprain/strain of the cervical and lumbar spine as well as of the shoulder. There is no change in the previously rendered opinion.

Claimant underwent physical therapy for a total of 9 visits from September 10, 2008 to October 3, 2008, when a Discharge Evaluation stating she was being discharged for non-compliance was issued. Physical therapy reports from September, 2008 indicate that the claimant reported some improvement in her lower back pain and that she was sitting better. Claimant cancelled the appointment on September 26, 2008 and stated at September 29, 2008 appointment that the pain in her lower back is 2/10, but that she still has right leg numbness. On October 1, 2008 claimant reported she felt better after the last treatment, stopped by [REDACTED] to do about 10 minutes of shopping, and has hurt ever since. Claimant was somewhat better after today's treatment. Claimant did not show for October 3, 2008 treatment.

Medical Examination Report for an exam of November 6, 2008 by the claimant's family doctor indicates that claimant is 5' 1" tall and weighs 240 lbs., with blood pressure of 110/66. Claimant's areas of limitations are that she can lift/carry less than 10 lbs. occasionally, and stand and/or walk less than 2 hours in an 8-hour workday. Claimant cannot use either hand/arm for reaching or pushing/pulling, and cannot operate foot/leg controls with either foot/leg.

Medical Examination Report completed on November 18, 2008 by a neurosurgeon indicates all of the claimant's examination areas are normal except for decreased range of motion in her neck and back. Claimant's condition is marked as stable, she is limited in frequently lifting/carrying up to 10 lbs. and up to 25 lbs. occasionally, she can stand and/or walk at least 2 hours in an 8-hour workday, and she does not need assistive devices for ambulation. Claimant has no limitations listed in the use of her hands/arms or her feet/legs, and no mental limitations.

November 20, 2008 whole body bone scintigraphy showed mild degenerative type uptake about the shoulders, sternoclavicular joints, knees, and ankles compatible with mild degenerative arthritis.

██████████ report from ██████████ states that the claimant was seen in June, 2009 for evaluation of narrow angles. Claimant was complaining of a pressure-like sensation around her eyes as well as intermittent headaches. Peripheral iridectomies in both eyes were completed with no difficulty, as the exam indicated dry eyes may be accounting for much of claimant's clinical symptoms. It was recommended that the claimant use artificial tears on a regular basis.

██████████ report of ██████████ for ██████████ ██████████ quotes the claimant as saying her chief complaint is fibromyalgia that was diagnosed in October, 2008. Claimant is currently on Flexeril and Advil as needed, Lyrica, calcium and multivitamins. Claimant reported doing some range of motion exercises at home, and that she tries to exercise, use heat, and rest. Claimant complains mostly of diffuse pain but it is mostly pronounced in the rhomboid area and in the knee area. Claimant appeared to be in mild discomfort. No clubbing, cyanosis, or edema is detected, and peripheral pulses are intact. There is no evidence of joint laxity, crepitance, or effusion. Grip strength remains intact, dexterity is unimpaired, but the claimant did have mild difficulty getting on and off the examining table, mild difficulty heel and toe walking, severe difficulty squatting, and was unable to hop. There is tenderness over the rhomboids, over the sacroiliac joints, and over the medial compartment of both knees. Cranial nerves are intact, motor strength and tone are normal, sensory is intact to light touch and pinprick, reflexes are intact and symmetrical, and claimant walks with a wide

based, small-stepped gait without the use of an assist device. Conclusion is that of fibromyalgia with current prognosis being fair but somewhat remediable.

[REDACTED]

[REDACTED] describes the claimant as complaining of chronic pain throughout her entire body and this has persisted since her injury last year. Claimant also reports having increased problems with memory and focus, and that her sleep pattern is affected by her pain. Claimant states that she is limited in terms of household activities because of the pain, but does the laundry, dishes, fixes herself something to eat, and is able to care for her own personal needs. Claimant finds shopping difficult as she cannot walk for extended periods of time as well as push or pull the cart. While the claimant states she seems to be having difficulty focusing and concentrating, this did not appear to be significant during the present assessment. Claimant reports feeling depressed and anxious about her health. Cognitive functioning appears average, and no significant deficits in memory or concentration were seen. Psychologically, claimant does not appear to have any significant functional restrictions. Claimant's diagnosis is adjustment disorder with mixed anxiety and depressed mood.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to

meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed 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 would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work included being a telephone operator and insurance claims representative, both sedentary jobs that would not include substantial lifting, prolonged standing or walking. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is 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 [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 insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least sedentary and light work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 46), with limited education (claimant has a high school education) and an unskilled or no work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant

The claimant has not 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). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no 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 not 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 does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is

unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary and light work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is 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.

2009-24798/IR

cc:

