

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: 2009-34532
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 8, 2009
Gogebic 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 October 8, 2009. Claimant personally appeared and testified. Claimant was represented by [REDACTED]

ISSUE

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

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 15, 2009, claimant filed an application for Medical Assistance and State Disability Assistance (SDA) benefits alleging disability.

(2) On January 21, 2009, the Medical Review Team (MRT) denied claimant's MA application stating that claimant's impairment(s) lack duration of 12 months per 20 CFR 416.909. MRT however approved claimant's SDA application with a review date of June, 2009.

(3) On March 13, 2009, the department caseworker sent claimant notice that her MA application was denied.

(4) On June 11, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 15, 2009, the State Hearing Review Team again denied claimant's MA application stating impairment lacks duration per 20 CFR 416.909, as her condition is improving or expected to improve within 12 months from the date of onset.

(6) Claimant is a 52 year old woman whose birthday is January 11, 1958. Claimant is 4'8" tall and weighs 100 lbs. Claimant completed 9th grade and has no GED, was in special education classes while in school for reading and math, has trouble reading and does not write well, and can do a little simple math.

(7) Claimant states that she last worked in 2001 doing housekeeping for a condo development for 1 month, job that ended due to having no transportation. Claimant states she has done no other work and has lived off welfare benefits most of her life.

(8) Claimant currently lives with her oldest son and receives food stamps. Claimant does not have a driver's license and states she never had one, cooks sometimes with son's help, grocery shops once per month, and does very little house cleaning due to back and ankle problems and not being able to see well.

(9) Claimant alleges as disabling impairments: right ankle fracture, hemorrhaging esophagitis, legal blindness, learning disability, placement of inferior vena cava filter, chronic

alcoholism, hypothyroidism, depression, seizures, arthritis, emphysema with pleural-based blebs, SOB, developmental anomaly, and degenerative changes with posterior osteophytes at C3-C4.

(10) Claimant has applied for Social Security disability and been denied, and is appealing the denial.

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 year 2001. 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 a hospital admission report of January, 2009. Claimant was admitted on January 1, 2009 after she had been drinking heavily, apparently was climbing down stairs, slipped out and landed on her back and right hip and fractured her right ankle. Claimant was operated on with external fixation of her right ankle. Claimant was significantly anemic and received 2 units of blood. Claimant was also treated with an alcohol withdrawal program and did very well with this with minimal symptoms of withdrawal and none at the time of discharge on January 8, 2009. Claimant is also a chronic cigarette abuser. Noted was the history of seizure disorder, but the claimant had not been taking seizure medications for some time now and has been doing fairly well.

Claimant was transferred to [REDACTED] for the purpose of having an inferior vena cava filter placed as a preventative measure, due to her having erosive esophagitis, risk of bleeding on Coumadin, and high risk for developing a deep venous thrombosis during recovery from her ankle surgery. Claimant was discharged on January 22, 2009 and was doing quite well. Claimant’s discharge diagnoses were right ankle fracture status post external fixator insertion, inferior vena cava filter, chronic alcoholism, hypothyroidism, depression responding well to Zoloft, mild pain presently responding to Duragesic patch, and history of erosive esophagitis, being managed on Prilosec.

[REDACTED] examination report of [REDACTED] states that the claimant has been a heavy drinker for many years, a situation that continues. Claimant’s ankle healing

process has been very slow, with initial treatment including use of a bone stimulator which was removed about two months ago. Claimant is to be non-weight bearing and continues to be casted, getting around in a wheelchair. Claimant also reports having had pain in her back for at least ten years and attributes this to arthritis. Claimant also notes a history of grand mal seizures since the 1980's, with last one being two months ago. Claimant was born with a lazy eye on the right and virtually can see nothing out of it, but no surgery was performed.

On physical examination, claimant was sitting comfortably in a wheelchair and was in no obvious distress, with a short non-walking cast noted on the right. Claimant was able to transfer using her arms to the examination table. Shortness of breath with exertion was not observed. Claimant had no apparent difficulty performing activities which required use of her vision, such as taking a pen from the medical assistant's hand and signing her name in the appropriate square. Claimant's immediate, recent, and remote memory appeared intact with normal concentration, and her insight and judgment appeared appropriate. Claimant weighed 101.5 lbs., her blood pressure was 126/73 and pulse 84. Visual acuity in claimant's right eye was 20/200 and left 20/50, without corrective lenses. Breath sounds were clear to auscultation and symmetrical, and claimant had regular heart rate and rhythm without enlargement.

Claimant was unable to balance on her left leg to perform any activities to test her lower extremities, and while standing on the left foot and holding onto the examination table, lumbar spine motion testing revealed that she complained of back pain with all motions.

Examiner concluded that the claimant likely has an element of chronic obstructive pulmonary disease present, having been a long-time smoker, an activity which continues. A degree of deconditioning is present, as the claimant has been wheelchair confined. Claimant's

history of chronic alcoholism also is likely a contributing to her shortness of breath symptoms as well.

June 14, 2009 Psychiatric/Psychological Medical Report quotes the claimant as saying she has a seizure disorder, but tests she has taken show nothing. Claimant reported that her last seizure was a month ago and she spent a day and over night in the hospital. When asked if the seizures are alcohol related, claimant responds that she gets them when she stops drinking, but she also has them when she has been off alcohol. Claimant also complained of lower back pain and that she was told she broke her back at one time and now has arthritis in it. Claimant stated she had crushed her ankle in January, 2009.

Claimant described her mood as very depressed due to living a “hard life”, and that she gets nervous and can’t breathe around big crowds. Claimant also reported being suicidal in the past by using aspirin, but she never went to the hospital for this, and denied self harming behavior. Claimant stated that she started using alcohol at about 13 or 14 years of age, and that she quit drinking in 200 to 2004 (about). Claimant last had alcohol the night before the exam, about a 6 pack, and also stated she smokes marijuana once per week as it makes her happy and able to eat and sleep. Claimant reports that she does drink nightly. Claimant reported having a male and female Chihuahuas and selling 10 puppies to pay the taxes for the house.

Claimant was in a wheelchair and dressed casually. She was in contact with reality, had low self esteem, and motor activity within normal limits. Claimant did not appear to exaggerate or minimize symptoms, but her insight was low. Claimant denied delusions, obsessions, thoughts controlled by other or unusual powers. Claimant cried several times in course of the interview.

Examiner's conclusion is that the claimant could understand one and two part directives, but she would not be able to understand complex directives. Claimant is limited in her ability to read, write and understand, and to learn she would need hands on training with simple tasks. Psychological condition of depression with negativity impact her persistence, pace, motivation and interest on a job. As the claimant encounters chronic interfering pain she also lacks strength and stamina and persistence. Claimant's diagnosis is alcohol and cannabis dependence, major depressive disorder, recurrent, severe without psychotic features, anxiety disorder NOS, borderline intellectual functioning, chronic pain, back and ankle injury, and GAF of 46. Claimant's prognosis is poor and she is not able to manage her funds.

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. However, as of the date of the hearing, October 8, 2009, claimant could sit for 25 minutes, stand for about 15 minutes, and walk about 1 block before her ankle bothered her. Claimant was no longer in a wheelchair, was sometimes using a cane not prescribed by her physician, and was having some balance problems. It would therefore appear that claimant's condition was improving as she was now able to walk and was no longer non-weight bearing and in a wheelchair as described in medical exams of June, 2009. Claimant's condition was therefore improving from January, 2009 date of ankle injury, and it does not appear that she would meet the 12 month condition duration. Claimant's vision was 20/200 in the right eye and 20/50 in the left eye without correction in May, 2009, condition she has apparently had all of her adult life. Claimant cited seizures, however did state that she has them when she stops drinking, so they may very well be caused by alcohol

withdrawal. Claimant continues to drink as of the date of the hearing. Claimant also appears to have some breathing problems at times, but continues to smoke.

There is no evidence in the record indicating that claimant suffers severe mental limitation. While the claimant does suffer from depression and cried several times during her psychological exam, she is a daily user of alcohol having a 6 pack the day before the exam, and also smokes marijuana. It is difficult to ascertain if the claimant's depressed mood is caused by her extensive substance abuse or if she would still suffer from this condition if she stopped drinking, as her anti-depressant medications are most likely not having the desired effect when mixed with daily extensive alcohol use. 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 his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his 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 not be able to make any type of conclusion as to claimant's ability to perform her past relevant work, as she has no work history and reports living off welfare benefits most of her life. It is noted that the claimant reported selling dogs to pay her property taxes, 10 of them, so

perhaps she is engaged in raising dogs for profit, but she did not testify to this. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached, based on lack of work history.

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).

No medical evidence past June, 2009 has been provided to ascertain what are the claimant's abilities as far as lifting, carrying, walking, sitting, etc. Claimant definitely was severely limited in performing any such activities while she was in a wheelchair with a non-weight bearing cast for 6 months. Hearing testimony elicited by claimant's representative is that she can only carry a gallon of milk, has trouble walking a distance, standing, or bending or squatting well. However, no medical evidence to support the hearing testimony has been provided. 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 any type of work, due to lack of such evidence past June, 2009.

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 and has been for a period of 12 months from the date of onset of her ankle injury, January, 2009. Claimant has therefore failed to meet the disability duration requirement under 20 CFR 416.909. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 benefits, due to lack of impairment duration. 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: May 17, 2010

Date Mailed: May 17, 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.

IR/tg

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