

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: 2009-37203
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 3, 2009
Gratiot 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 November 3, 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 retro 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 May 26, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 13, 2009, the Medical Review Team (MRT) denied claimant's MA application stating that claimant's condition lacks duration of 12 months per 20 CFR 416.909. MRT however approved claimant's SDA application with a review date of October, 2009.

(3) On July 28, 2009, the department caseworker sent claimant notice that her MA and retro MA application was denied.

(4) On August 18, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 8, 2009, the State Hearing Review Team (SHRT) again denied claimant's MA application stating she was capable of performing past work per 20 CFR 416.920(e).

(6) Claimant provided additional medical information following the hearing which was forwarded to SHRT for review. On March 5, 2010 SHRT denied claimant's MA and retro MA application stating that medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery, and therefore lacks 12 month duration. SHRT also considered medical reports completed for Disability Determination Service in their decision.

(7) Claimant is a 60 year old woman whose date of birth is [REDACTED], and who is 5'4" tall and weighs 225 lbs. Claimant has an associate degree with a double major in management and administrative services, and can read, write and do basic math.

(8) Claimant states that she last worked in February 2007 as a sales associate at [REDACTED] [REDACTED] for 5 years, job that ended due to a customer complaint. Claimant received UCB until May, 2009 when she suffered an injury. Claimant has also worked in a boarding house and a homeless shelter as a manager from 2001 to 2005, and as a casino clerk from May, 1999 to May, 2001.

(9) Claimant lives with her son and receives food stamps, has a driver's license but does not drive because she cannot grip the wheel with her left hand, cooks simple things, grocery shops with son's help, and does a little housework.

(10) Claimant alleges as disabling impairments: broken right and left humerus and broken left wrist from a fall in May, 2009, type 2 diabetes and high blood pressure.

(11) Claimant has applied for SSI and RSDI and been denied at initial step according to the decision dated February 11, 2010 sent by SHRT.

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).

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 2007. 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 report of May, 2009 stating that the claimant was admitted through the emergency room after she fell down sustaining fracture of the right and left arm and left wrist. Claimant had surgery on May 25, 2009 for closed reduction left wrist and application of long arm cast and closed reduction left shoulder.

Letter from the treating physician of November 30, 2009 describes the claimant sustaining a serious fracture of the right proximal humerus, the left proximal humerus and a comminuted fracture of the left wrists, after she fell at home in May, 2009. Claimant underwent closed reduction and casting of the left wrist fracture and closed reduction of the left shoulder, but the right proximal humeral (shoulder) fracture did not require closed reduction at that time. Doctor is of the opinion that this combination of injuries made the claimant completely and totally disabled. Claimant was discharged from the hospital and admitted to a nursing home, and her fracture healed slowly during the summer. Claimant had subsequent stiffness in both shoulders and the left wrist on the basis of the severity of the fractures and immobilization. Claimant is completely and totally disabled from the date of her injury and is expected to be disabled completely at least until May 24, 2010 and probably beyond.

Initial Evaluation Note from [REDACTED] for a visit of [REDACTED] [REDACTED] states that the claimant was evaluated for bilateral hand numbness/weakness. It is noted that the claimant was in a nursing home from June 12, 2009 to July 15, 2009, as she needed total care. Claimant had MRI scan of cervical spine, which showed some disc bulging without significant stenosis or cord compression. Claimant has continued to have pain in the right hand, which is quite annoying, but does not have any pain in the left hand. Claimant however

continues to have significant weakness in both hands, wears a brace on the left hand, and has not been able to make grip with her left hand, which remains swollen. On examination, the claimant had adequate strength in all four extremities except for some weakness of the left handgrip. Claimant could not even make the grip with her left hand because of the swelling and pain. Sensation was decreased distally in all four extremities in neuropathic pattern, coordination was normal, gait was steady, and the claimant had some tenderness to palpation in the cervical and lumbar region with decreased mobility.

Claimant underwent EMG of upper extremities on this day, which showed evidence for bilateral ulnar neuropathy as well as carpal tunnel syndrome without any evidence for cervical radiculopathy or myopathy. Claimant has had bilateral hand numbness/weakness related to peripheral neuropathy probably secondary to type 2 diabetes mellitus.

Noninvasive testing arterial study of claimant's upper extremities was performed on January 29, 2010. The pressures were basically symmetrical and no obvious findings to suggest significant stenosis on either side were noted. X-rays of claimant's left hand revealed mild diffuse osteopenia, degenerative changes of the finger joints, and deformity of the distal left radius likely consistent with previous trauma. X-rays of claimant right hand also revealed mild diffuse osteopenia and degenerative changes in the finger joints.

██████████ examination report from ██████████
██████████ quotes as claimant's chief complaints shoulder, left wrist and hand problems, neck pain and diabetes. Claimant was not taking anything for pain, was using a left wrist brace, but was not undergoing any therapy due to lack of income and did not do any therapy at home. Claimant stated she was able to climb stairs and do household chores, drive, cook, and button and zip, but could not open jars or do any repetitious activities because of pain.

Claimant denied any real problems sitting, standing or walking, and she could not lift anything more than 20 pounds.

Physical examination showed no evidence of joint laxity, crepitation, or effusion. Claimant had tenderness over both anterior shoulder joints and her grip strength was diminished bilaterally with 70% grip remaining bilaterally. Claimant's dexterity was mildly impaired bilaterally and she had mild difficulty but could pick up a coin, button clothing, and open a door. Claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking and mild difficulty partially squatting. Neurologically claimant's cranial nerves are intact, motor strength and tone are normal, sensory is intact to light touch and pinprick, reflexes are intact and symmetrical, and she walked with a normal gait without the use of an assist device. Conclusion was that of shoulder and wrist pain, and that the claimant does have some mild dexterity loss, mild difficulty doing orthopedic maneuvers, and diminished range of motion more pronounced on the left side than the right. Continued supportive care would be helpful. Claimant's long term prognosis appears to be fair to guarded due to lack of remediability and risk of secondary post traumatic deterioration.

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. For these reasons, this Administrative Law Judge finds that claimant has met her burden of proof at Step 2, and the analysis proceeds 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 must decide if the claimant is able to perform her past relevant work. Claimant’s past relevant work was as a sales associate at [REDACTED], manager of a boarding house and homeless shelter, casino clerk and secretary, all jobs that involve extensive use of hands. 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 [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, and that she is physically unable to do even sedentary work if demanded of her, due to her hand issues. 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. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that she has established by objective medical evidence that she cannot perform even sedentary work at this time. Claimant's

condition is expected to last 12 months from the date of her wrist surgery, which was May, 2009.

This conclusion is based on the medical opinion of [REDACTED] stating that the claimant's long term prognosis is fair to guarded due to lack of remediability and risk of secondary post traumatic deterioration.

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.

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 retro MA application.

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

1. Process claimant's disputed May 26, 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 in writing of department's determination.
4. Review claimant's continued MA eligibility in June, 2011, at which time updated medical reports and records of any treatment such as physical therapy are to be obtained.

SO ORDERED.

/s/

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

Date Signed: May 21, 2010

Date Mailed: May 24, 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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