

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: 2009-11650

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 28, 2009

Montcalm 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 April 28, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her landlord [REDACTED]

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 October 20, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On December 2, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 8, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On December 17, 2008, claimant filed a request for a hearing to contest the department's action.

(5) On February 10, 2009, the State Hearing Review Team again denied claimant's application stating that she is capable of performing other work, namely sedentary and light work per 20 CFR 416.967(a) and (b) and Vocational Rule 202.17 and 201.18.

(6) Claimant is a 50 year-old women whose birth date is [REDACTED] Claimant is 5'5" tall and weighs 142 pounds. Claimant attended the 11th grade and does not have a GED. Claimant can read and write but has difficulty with math.

(7) Claimant states that she last worked in 2004 at a factory, job which lasted her 4 years until she was hurt. Claimant received short term disability payments for her job injury, and then was terminated. Claimant also worked in another labor-type job for 7 months in 1999, and has done home cleaning, home care, and restaurant work during her adult life.

(8) Claimant currently lives alone in an apartment while going through a divorce to be final in May, 2009. Claimant's daughter has been helping her with rent and other bills.

(9) Claimant alleges as disabling impairments: anxiety, depression, hearing loss for which she wears a hearing aid, degenerative disc disease, cysts on her feet, sciatic nerve pain, high cholesterol, diabetes, bowel problems, hormone issues, thyroid problems, heart conditions, and headaches.

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 year 2004. 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record consists of office notes and medical tests. Stress EKG Report of [REDACTED] due to claimant complaining of fatigue and chest tightness showed no significant changes with exercise, and the claimant demonstrated an average level of fitness for age. Heart rate was regular without murmurs or gallops (Department's Exhibit I, page 59).

MRI of claimant's cervical spine of [REDACTED] showed broad based degenerative disc bulge with accompanying spur C5-C6, and small central disc herniation C2-C3. (Department's Exhibit I, page 58).

MRI of claimant's lumbar spine of [REDACTED] showed focal disc herniation in the right paramedian region at L5-S1 causing minimal anterior compression of the thecal sac. The neural exit foramina were not compromised and the exiting nerve roots were not encroached upon, but there was mild bilateral facet arthritis. There was broad based disc bulging at L2-L3 contributing to the flattening of the thecal sac, however, the AP diameter of the spinal canal was preserved (Department's Exhibit I, page 57).

On [REDACTED] claimant was examined by a neurologist and complained of low back pain and pain in the right lower extremity, with numbness and weakness. Claimant also complained of neck pain with pain going down the right upper extremity due to a herniated disc in her neck. On neurological exam, the claimant was well developed, well nourished and well groomed, alert in time, person and place, her recent and remote memory seemed to be within normal limits, attention span and concentration seem to be quite good, and her speech was good. Motor exam showed the claimant to have some weakness of the plant flexion of the foot on the right compared to the left. She had weakness of the biceps on the right. Reflexes seemed symmetrical, with maybe a hint of decrease of the ankle jerk on the right compared to the left. In the upper extremities reflexes were fairly symmetrical. Claimant was showing clinical signs of a C6 radiculopathy and of an S1 radiculopathy on the right. Her MRI showed a small disc herniation at C2-3 which was not thought to be symptomatic, but the one at 5-6 is degenerative disc diseases, spondylosis, stenosis and degenerative disc causing stenosis at 5-6 is symptomatic causing her a C6 radiculopathy. Claimant was told she can continue treating with her family doctor for any conservative treatment, or the last option would be surgical intervention (Department's Exhibit I, pages 15 and 16).

Office Note of [REDACTED] states that the claimant is seen for a follow-up evaluation, and she is in emotional distress due to marital problems. Claimant was alert but upset, her blood pressure was 146/94, chest clear to auscultation with no crackles or wheezes, heart sounds regular with no appreciated murmur, gallop or click, and the abdomen was benign and non-tender. Claimant's extremities had no gross deformities, cyanosis or edema. Claimant was continued on her medications, diagnosed with fibromyalgia and left upper extremity pain/possible compressive neuropathy/carpel tunnel syndrome, with a follow up in one to two months (Department's Exhibit I, page 20).

Medical Needs form of November 11, 2008, states that the claimant has low pain, fibromyalgia, disc herniation and radiculopathy, and that she will need assistance with shopping, laundry and housework. Claimant's condition would make her unable to work at any job indefinitely (Department's Exhibit I, page 14).

Medical Examination Report received by the department on [REDACTED] does not have parts completed with the dates of first and last examination, history of impairments, current diagnoses, or physical examination. While the person that completed the form indicates that the claimant can only lift less than 10 lbs., stand and/or walk less than 2 hours in an 8-hour work day, that she cannot use her hands/arms for any type of repetitive actions, that she cannot operate foot/leg controls with either foot/leg, and that she has mental limitations in comprehension, sustained concentration and reading/writing, no explanation as to what medical findings that support such severe limitations is given. There is no printed name, address, telephone number or the date the form was completed indicated on the form, and the signature cannot be read (Department's Exhibit I, pages 4 and 5).

Claimant's doctor wrote a letter received by the department on [REDACTED], stating that the claimant has been evaluated by him and "deemed disabled" because "she is unable to adequately perform in the workforce like someone of her age and stature should". No explanation of claimant's conditions and how they affect her ability to work is given (Department's Exhibit I, page 3).

Based on the report by the neurologist describing claimant's degenerative disc disease this Administrative Law Judge finds there is objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment.

While the claimant testified she suffers from anxiety and depression and that she has suffered from these impairments all of her life due to bad life as a child, several marriages and pain she is in, there is no evidence in the record indicating that she had undergone any type of psychiatric or psychological treatment for these issues. No diagnosis of these conditions is contained in claimant's record from a mental health professional. While this Administrative Law Judge finds claimant's testimony that she is depressed credible, especially since she is getting divorced, the evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. However, due to claimant's physical problems, this Administrative Law Judge finds that claimant has met her burden of proof at Step 2.

The analysis 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, the Administrative Law Judge finds that the claimant could not do her past relevant work due to her back problems. Claimant's past work consisted of labor-type jobs that involved physical exertion and such jobs could aggravate her degenerative disc issues, or possibly make her unable to perform them due to pain it may cause her. 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 has submitted objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, and that she is physically unable to perform more than sedentary 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. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (age 50), with limited education (no GED) and an unskilled work history who can perform only sedentary work is considered disabled pursuant to Medical-Vocational Rule 201.09.

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). 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 therefore 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 erred in denying claimant's application for Medical Assistance and retroactive Medical Assistance.

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

1. Process claimant's disputed MA and retroactive MA application of October 20, 2008, and grant her any such benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant in writing of this determination.
3. Complete a medical review of claimant's case in May, 2010, at which time claimant is to provide current medical records of treatments she has undergone for her back issues, as directed by health care professionals.

SO ORDERED.

/s/

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

Date Signed: June 5, 2009

Date Mailed: June 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.

IR [REDACTED]

cc:

[REDACTED]