

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: 2009-15532
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 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 June 2, 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), 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 19, 2008, claimant filed an application for Medical Assistance, retroactive MA and State Disability Assistance benefits alleging disability.

(2) On December 11, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work per 20 CFR 416.820(f) and Vocational Grid Rule 202.18.

(3) On December 16, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On February 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 19, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant was capable of light work per 20 CFR 416.967(b) and Vocational Rule 202.17. SHRT also enclosed a decision by the Social Security Administration (SSA) Administrative Law Judge denying claimant's Social Security/SSI disability application on February 3, 2009.

(6) Additional medical information was reviewed by SHRT in June, 2009 and did not alter the previous denial of March 19, 2009.

(7) Claimant is a 45 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 182 pounds after losing what she claims is 50 lbs. in 7 weeks due to medical problems. Claimant completed a little over 10th grade and has no GED, but can read, write and do basic math.

(8) Claimant states that she last worked in 2004 until she had a heart attack, as a home health provider for the State of Michigan, job she held for over 9 years. Claimant was also a child care provider and a manager of [REDACTED].

(9) Claimant was homeless at the time of the hearing after living with her fiancée until August, 2008, and was helped by her son and received food stamps. Claimant has a driver's license and stays in her vehicle in the driveway.

(10) Claimant alleges as disabling impairments: heart disease, spinal fusion, fibromyalgia, narcolepsy, sleep apnea, renal failure, irritable bowel syndrome, COPD, MRSA, depression, PTSD, manic depressive disorder, asthma, throat polyps, two steel rods in her neck, and anemia.

(11) Claimant has been denied Social Security disability by a hearing decision of February, 2009 and has appealed this decision to the Social Security Appeals Council. No decision has been rendered by the Appeals Council as of June, 2010.

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 (RFT).

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 (RFT).

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 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 dates back to year 2005 and is contained in the decision of Social Security Administration Administrative Law Judge. On August 1, 2005, claimant underwent a cardiac catheterization which identified 100% stenosis in the right coronary artery. Medical procedures successfully placed stents into the right coronary artery. In a January, 2007 medical report, claimant’s physician opined that in evaluating claimant’s cardiac condition over a period of time claimant has been “doing well”.

The medical records also show that prior to April, 2006, claimant was assessed as having a “mass” in the region of cervical levels “C5/C6”. In the month of April, 2006, claimant’s spinal column was the subject of surgical intervention identified as a “successful cervical fusion and discectomy”.

Claimant had reported to her treating sources that she was occasionally experiencing symptoms of pain in her arm. In August, 2007, an EMG assessment was made and the resulting opinion was that there was no evidence of any indication identifiable as a carpal tunnel syndrome. The medical opinion was that there were indications of a “median nerve neuropathy” with the physician recommending claimant wear a wrist splint.

Claimant has also alleged back pain symptoms. In addition to the cervical surgical procedure, on November 29, 2007 an MRI of claimant’s lumbar spine identified no significant changes when compared to an earlier assessment in September, 2000. Both MRI’s did not identify any form of a disc herniation, but described a “mild to minimal degenerative changes”.

Claimant also states she suffers from asthma and has been since birth or as a young child. Medical records do show that the claimant has been assessed and treated for asthma conditions with medical advise to “stop smoking” to reduce symptoms related to this condition. Claimant testified that she was still smoking at the time of the hearing, “one cigarette per day”. A medical report of February 18, 2008 assessed claimant’s asthma to be under “good control”. Claimant testified at SSA hearing that her asthma condition would not prevent her from engaging in work activity.

Claimant has also alleged suffering from depression, but has not obtained any type of an assessment, counseling or treatment with mental health specialists, and has never been hospitalized for any form of a mental impairment. Claimant has been prescribed medications by her general practioner for depression. Claimant was evaluated by a social worker on November 6, 2007, at the direction of the DDS/SSA appointment, and reported she was mildly depressed over health problems. Social worker was of the opinion that the claimant did not have significant mental functional limitations due to her claim of depression, she was independent in

her activities of daily living, engaged in socializing, and did not provide any instances identifiable with episodes of decompensation. Claimant reported having “some memory problems” and social worker stated she could have “moderate difficulties in concentration”. Claimant was also evaluated by State agency medical consultant in November 26, 2007, who described the claimant as having a “medically determinable disorder diagnosed as mild depression, recurrent type, that is present that does not precisely satisfy the diagnostic category 12.04 of the mental Listing of Impairments”. Consultant further stated that the claimant has mild restriction as to activities of daily living, none in maintaining social functioning, moderate in maintaining concentration, persistence or pace, and none as to episodes of decompensation.

Medical Examination Report from a cardiologist for an exam of August 26, 2008 indicates that the claimant has no physical limitations from cardiac standpoint.

Medical Examination Report for the exam of the same date from a pulmonary specialist states as claimant’s current diagnoses bronchial asthma, allergic rhinitis, hypertension and hyperlipidemia. Claimant weighed 216 pounds and had blood pressure of 110/64. All of claimant’s examination areas are marked as normal except for asthma and cervical disk disease. Claimant’s condition is stable and she can meet her needs in the home without any assistance.

August 26, 2008 pulmonary function test indicates that claimant has a moderate obstructive airways disease.

████████████████████ medical evaluation of ████████████████████ cites as claimant’s chief complaints asthma, emphysema, narcolepsy, sleep apnea, manic depression, heart attacks, carpal tunnel syndrome, neck surgery and back pain. Claimant was not on inhaler therapy as she has lost her insurance. She has not been hospitalized in the past year for shortness of breath, but does have intolerance to perfume and cleaning agents. Claimant quit smoking

3 months ago. Claimant reported that she will cough so hard at time that she will become incontinent of urine. She denied any lower extremity edema at present.

Claimant has had a history of degenerative arthritis to her cervical spine and carpal tunnel disease, but is not undergoing any physical therapy and does not use an assistive device other than a lower back brace.

Claimant has also had a history of multiple throat polyps that were removed between 2000 and 2006, is not on any treatment, and continues to have a raspy voice.

Claimant appeared in mild discomfort. She was cooperative in answering questions and following commands, and her immediate, recent and remote memory was intact with normal concentration. Claimant's blood pressure was 140/90. Her breath sounds were clear to auscultation and symmetrical, and her heart had regular rate and rhythm without enlargement. No clubbing, cyanosis, or edema was detected, and the feet were warm and normal color, but there was decreases in pulses. There was no evidence of joint laxity, crepitation, or effusion, claimant's grip strength remains intact, dexterity unimpaired, and she had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, squatting and was unable to hop. Neurologically, claimant's cranial nerves were intact, motor strength and tone were normal, sensory intact to light touch and pinprick, reflexes 2+ and symmetrical, and she walked with a small stepped gait without the use of an assist device.

Evaluation conclusion is that of cervical and lumbar spine disease, mild carpal tunnel syndrome and chronic tenosynovitis, presumably due to overuse. Claimant did have diminished grip strength today due to pain but there was no evidence of atrophy or myopathy. Claimant did use wrist braces. Claimant's neck appeared to be stable with well preserved range of motion. There was no finding of any disease of the muscles in regards to claimant's lower back, and

while she uses a back brace which appears helpful for pain control, it is not required. There were no findings of congestive heart failure. Claimant did have cough with at least mild to moderate persistent disease. There were no significant findings in regards to claimant's history of manic depression, irritable bowel, gastroesophageal reflux disease, and MRSA. Claimant's current prognosis is guarded to poor due to her current social situation (living in her car, no insurance or money to get medications).

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. Claimant has therefore met her evidentiary burden at Step 2 and analysis continues 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 finds that the claimant is not capable of performing her past relevant work due to combination of her impairments. Claimant's past relevant work was as a home health provider, office cleaner, fast food worker, store laborer, and manager at [REDACTED]. These jobs would require significant physical exertion. Finding that the claimant is unable to perform work which she has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted sufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment. However, the claimant is physically able to do at least 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. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that he cannot perform at least sedentary work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 45), with limited education and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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). However, 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 possibly 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: June 29, 2010

Date Mailed: June 29, 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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