

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: 2009-18506
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 18, 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 June 18, 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 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 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 12, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 17, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On February 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 5, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating she was capable of performing other work, namely sedentary and light work per Vocational Rule 201.29.

(6) Claimant provided additional medical information following the hearing which was forwarded to SHRT for review. On September 10, 2009 SHRT suggested that additional medical information be obtained and denied the claimant based on insufficient evidence.

(7) Additional medical information per SHRT suggestion was obtained and forwarded for review. On November 5, 2009 SHRT denied the claimant stating she could perform other work, namely medium unskilled work per Vocational Rule 203.22.

(8) Claimant is a 50 year old woman with a birthdate of November 7, 1959. Claimant is 5'5" tall and weighs 190 lbs. after she gained 30 lbs in the last year from she believes is her medication. Claimant has a PHD in music and history, and can read, write and do basic math.

(9) Claimant states that she last worked in June, 2007 as a director of music at a church in [REDACTED], job she held for 6 years and quit after she could no longer stay in [REDACTED] because she could not live there on part time income. Claimant was also a lecturer at [REDACTED] from September, 2003 through August, 2006, but was not retained as

she could not be published. Claimant was a graduate student and taught at [REDACTED] and [REDACTED] [REDACTED] from August, 1989 to June, 1996 and then from August, 1999 to September, 2003.

(10) Claimant currently lives on a family farm with her two children, ages 11 and 13, and supports herself with child support and food stamps. Claimant has a driver's license and drives to the grocery store, 24 mile round trip, and to doctor appointments.

(11) Claimant alleges as disabling impairments: uncontrolled hypertension, chronic fatigue syndrome, possible multiple sclerosis, hypothyroidism, borderline biatrial enlargement, mild left ventricular hypertrophy, depression, anxiety, possible genetic blood mutation, and carpel tunnel syndrome.

(12) Claimant has applied for SSI and been denied twice, and has appealed 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 June, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a December 14, 2007 SSI denial stating that claimant’s condition is not severe enough to keep her from working, and listing chronic fatigue syndrome and multiple sclerosis as claimant’s alleged impairments.

Neurological Progress Note of December 22, 2006 describes the claimant was having fatigue and progressive cognition issues going on for about three years. MRI scan of claimant’s brain showed multiple areas of periventricular white matter disease including lesion in the corpus callosum strongly suggestive of multiple sclerosis, although neuroimaging of claimant’s spine did not reveal any spinal lesions and she had a normal spinal fluid analysis.

On August 13, 2008 claimant was admitted to the hospital due to having chest pain and blood pressure of 176/115. Claimant had a normal electrocardiogram and it was noted that her cardiopulmonary status is above average.

Medical Examination Report of November 25, 2008 states as claimant's diagnosis chronic fatigue syndrome, hypoledimia, and possible MS. Claimant can lift/carry less than 10 lbs. occasionally and stand/walk or sit at least 2 hours in an 8-hour workday. These limitations are based on "history from patient".

MRI of claimant's brain dated May 22, 2009 shows focal areas of increased signal intensity in the deep white matter of both cerebral hemispheres, especially in the frontal and parietal regions, due to possible multiple sclerosis. No focal areas of abnormal contrast enhancement are noted, there is no obvious mass, mass effect, midline shift or evidence of acute infarction on the diffusion images is seen.

██████████ from a ██████████ states that the claimant reports many disabling symptoms that have prevented her from working full time, including fatigue, excessive sleeping up to 12-15 hours per day, confusion, forgetfulness, difficulty speaking, sore muscles, cold intolerance, chronic neck pain, anxiety and depression, among others. Claimant also reports that these symptoms interfere with her activities of daily living, and they began around 2003.

Psychiatric/Psychological Examination Report of October 5, 2009 states that the claimant drove herself to the appointment. Claimant described coming back to Michigan with her children a year ago as there is a family farm she can live on. Claimant stated she had mono six years ago that "kicked her butt", she has not been able to recover, and she guesses it is called chronic fatigue syndrome. Claimant further stated she has had three brain scans and has white matter lesions, but that the last doctor told her he does not think it is MS.

Claimant described her typical day as getting up at 6:00 am to put her children on the bus, going back to bed, getting up at 10:30 am to have coffee and taking it easy until her children get home from school. Afternoon activities were described as sometimes going to the library to use the Internet, watching TV a lot and crocheting. Her children return home around 4:00 pm, they eat, and claimant does the laundry and helps the children with homework, watches TV and goes to bed at 8:30 pm. Claimant reported having difficulty sleeping, waking up a lot and taking Ambien for that. Claimant also reported waking up feeling “pretty good” two or three days a week, being able to complete all household chores, but noted “it take me a long time. I have got to sit down a lot’. Claimant could independently complete her own personal hygiene and shop.

Claimant’s clothing and hygiene were appropriate, her posture and gait normal, and she was cooperative. Claimant appeared to be in contact with reality, her thoughts were spontaneous and well organized, and there were no problems in pattern of speech. Claimant denied the presence of any auditory or visual hallucinations, or current suicidal ideation. Claimant’s emotional reaction was distressed.

Claimant’s diagnosis is that of a major depressive disorder, recurrent, moderate, and a GAF of 70. The claimant is able to understand, retain, and follow simple instructions, and she can be expected to understand simple changes in the work environment. Claimant reported problems with depression and chronic fatigue syndrome, that, if medically substantiated, could interfere with her ability to maintain full-time employment.

Mental Residual Functional Capacity Assessment of October 5, 2009 indicates that the claimant is not significantly limited in most areas.

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

medical record is insufficient to establish that claimant has a severely restrictive physical impairment. While the claimant alleges chronic fatigue syndrome that causes her major problems in daily functioning, she is a sole caretaker of two children ages 11 and 13, gets them ready for school at 6:00 am, drives, buys groceries, does the laundry, vacuums and does the dishes, teaches her children Spanish and gives them piano lessons, and reads novels, crochets, listens to music, and watches TV. It is noted that while the claimant has told medical sources for a period of years that she has chronic fatigue she did hold a part time job until June, 2008 in [REDACTED], and earned \$900 per month, and quit the job because she could not afford to live on the salary in that town. Claimant then moved to Michigan. While this Administrative Law Judge does not believe that the claimant is offering false testimony, she must give consideration to what the claimant is actually able to do when deciding if she has a severely restrictive physical impairment. This is because medical tests do not in claimant's case, and quite frequently cannot establish that a person suffers from chronic fatigue syndrome, unless such person is in an environment where he/she is observed by medical professionals. Therefore, what the claimant has actually done and what she is doing in her daily life must be used to supplement lack of medical information/tests that can support the condition she alleges she has.

There is no evidence in the record indicating that claimant suffers severe mental limitation(s). Claimant does suffer from depression and testified that this is, understandably, caused by loss of her job, loss of her identity and low self esteem. However, the psychological evaluation does not reveal that the claimant's mental issues would drastically affect her ability to work, or that they affect her daily functioning. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative

Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was as a church music director and teaching. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

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

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

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

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *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 insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least medium work if demanded of her. Therefore, this Administrative Law Judge finds

that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform sedentary, light and medium work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 50), with high school education or more (claimant has a PHD) and a skilled work history (claimant was a music director and a lecturer at [REDACTED]) who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.16.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

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

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

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

Date Signed: April 7, 2010

Date Mailed: April 8, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

2009-18506/IR

cc:

