

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: 2009-21842
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 8, 2009
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 8, 2009. Claimant personally appeared and testified.

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 December 4, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 22, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.920(c).

(3) On February 5, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On April 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 26, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant retains the capacity to perform a wide range of light work per Vocational Rule 202.20.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On January 8, 2010 SHRT once again determined that the claimant is not disabled, as she retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature, and cited Vocational Rule 202.20 as a guide.

(7) Claimant is a 45 year old woman who is 5'5" tall and weighs 170 lbs., stating she had gained 25 lbs. in the last 3-4 months due to medications she is on. Claimant completed 12th grade and has a CNA certificate, and can read, write and do basic math.

(8) Claimant states that she last worked 3 years ago in the home health care field, and then lived with and took care of her grandmother until she died in July, 2009. Claimant has worked in a hospital in [REDACTED], and also had her own business, a feed company and store up to 2004.

(9) Claimant lives with her husband who works and receives food stamps. Claimant does not have a driver's license as she received 2 DUI's in 90 day span about 3 years ago, and also a ticket for driving on a suspended license. Claimant cooks, grocery shops, cleans her home

by vacuuming, sweeping and doing the dishes, mows the lawn with a riding lawn mower, and reads and watches TV.

(10) Claimant alleges as disabling impairments: cerebral vascular accident (stroke) in 2008, short term memory loss and muscle aches in legs and arms as a result of the stroke.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is

reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that she has not worked since year 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 [REDACTED] [REDACTED] report stating that claimant was seen for left facial weakness. Claimant reported being quite upset last night over some family matters and later noticing she was unable to really move the left side of her face or talk properly. Claimant then slept for the night but still had problems with her speech noticed by her mother the next morning, and went to the emergency department. Bell’s palsy was ruled out on clinical grounds. Claimant appeared to have a focal CVA involving the right cerebral hemisphere causing left facial weakness. There was no perceptible weakness of the arm or leg, she was able to ambulate well, but had some mild tingling feelings on the left side of her body. Claimant was admitted to the hospital with a diagnosis of CVA evolving. Claimant was a one pack a day smoker, but denied alcohol use. Claimant’s blood pressure was 129/87 and pulse 97. Exam revealed paralysis of the left face and movement of the area around the left side of claimant’s mouth. Claimant’s heart was regular without murmur or gallop. Claimant’s grip strength was equal bilaterally, she moved all extremities well, had normal deep tendon reflexes in the upper extremities, and intact sensation in the upper and lower extremities. Claimant was admitted for the night in order to perform further tests.

MRI of claimant’s brain of November 24, 2008 indicates mild paranasal and mastoid sinus disease, mild white matter disease which may represent multiple sclerosis, small vessel

ischemia and/or old lacunar infarcts. There is no evidence of an acute infarct. CT of claimant's brain was negative.

Medical Examination Report completed on December 15, 2008 states that the claimant is 5'6" tall and weighs 171 lbs., with blood pressure of 114/64. All of claimant's examination areas are normal except for mild persistent left sided weakness and anxious mental status. Claimant's condition is improving with expected date to return to work being January 2, 2009. Claimant is limited to lifting/carrying up to 20 lbs. occasionally, standing and/or walking at least 2 hours in an 8-hour workday, and sitting for about 6 hours in an 8-hour workday. Claimant does not need any assistive devices for ambulation, but can only use her right hand/arm for repetitive actions, and operate foot/leg controls with only her right side. Claimant has mental limitations in the areas of memory and sustained concentration, but her meet her needs in the home without assistance.

[REDACTED] indicates that the claimant was initially diagnosed with an acute stroke, however the weakness has persisted and she has had episodes of pain in the arms and legs, which have been episodic. This has improved with steroids that she was placed on this past week. Claimant's physician has told her over the past week that he felt her problems were more likely MS rather than a stroke. Claimant does not utilize an assistive device for ambulation at this time, but has difficulty going up and down stairs, as well as getting up out of chairs. Claimant was still smoking a pack a day. Claimant's blood pressure was 110/70, pulse 60 and regular, and she weighed 178 lbs. Claimant had a small step gait with a mild left-sided limp. Claimant had no difficulty getting on and off the examination table with a mild to moderate difficulty with heel-toe walking and squatting, and there was 4/5 weakness diffusely in the left upper and left lower extremity. Right upper and lower extremity

strength was preserved. There was left facial droop noted. Range of motion in all joints checked was full, but there was slightly decreased dexterity of the left hand with poor coordination approximating the fingers of the hand to the thumb.

Neurological examination revealed present and symmetric reflexes in the lower extremities, negative Romberg testing, and appropriate finger-nose-finger evaluation. Rapid alternating hand movements are normal, and although the left side shows some decreased tempo as compared to the right, accuracy is present. Claimant was alert and oriented x3.

Psychological examination of April 11, 2009 quotes the claimant as describing her condition as the residual effects of a stroke on November 23, 2008. Claimant described memory difficulty and also reports she may have MS. Claimant's list of medications included Plavix, Simvastatin, Propran, Ativan, Prozac, Ibuprofen, Midrin, Prednisone, Aricept, and Vicodin. Claimant reported no participation in mental health counseling services. Claimant has no history of suicide ideation, self-injurious behavior, or suicidal gestures, but did report that she has been experiencing symptoms of anxiety and depression subsequent to her stroke in November, 2008. Claimant also stated she has panic attacks on a daily basis due to getting nerved up about not remembering things.

Claimant's longest job was working as an ER tech for about seven years. Claimant also provided home health care, drove a school bus, owned her own bridal shop and worked at a nursing home. Claimant reported enjoying working her garden and fishing. Claimant's daily routine begins at 7 a.m. when she gets up, eats breakfast, does the dishes, the laundry and has "running around" to do, as her husband drives her to the grocery store or to doctor's appointments. Claimant attends her children's sporting events and visits family members.

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 met her evidentiary burden at Step 2, and analysis continues.

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 does not find that the claimant has the ability to perform past relevant work as an ER technician, due to left side weakness and her memory issues. Claimant's past relevant work also included home health care and working in a nursing home, both jobs that would involve lifting of patients which may be difficult for the claimant to do, again due to her left side weakness. 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 insufficient objective medical evidence that she is physically unable to do sedentary and light 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 sedentary and sedentary work. Medical Examination Report indicates that the claimant can perform such work. In addition, claimant performs household duties of and activities of daily life which would be considered light in nature. Claimant can perform such duties even with her memory issues. Under the Medical-Vocational guidelines, a younger individual (claimant is age 45), with high school education and an unskilled work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

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 simple sedentary and 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: May 11, 2010

Date Mailed: May 13, 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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