

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 20092599
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: December 23, 2008
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, December 23, 2008. The claimant personally appeared and testified on her own behalf.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. On May 9, 2008, the claimant applied for MA-P without filing an application for retroactive MA-P.
2. On July 2, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant is capable of past relevant work 20 CFR 416.909(E).
3. On July 7, 2008, the department caseworker sent the claimant a notice that her application was denied.
4. On October 7, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

5. On October 30, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P and eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to arthritis of the knees and low back pain. She is 64 years old and has a high school education with a history of clerical work. The claimant did not meet applicable Social Security Listings 1.02 and 1.04. The claimant is capable of performing past work that was clerical.
6. During the hearing on December 23, 2008, the record was left open for the claimant to provide additional medical information.
7. On October 18, 2010, the department caseworker sent the Administrative Law Judge an e-mail stating that the department caseworker had previously sent an e-mail on March 20, 2009 advising the ALJ that the claimant had requested additional time to provide additional verifications, but as of this date, the claimant has never turned in any verifications to the department and the record will be closed.
8. The claimant is a 66 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 200 pounds. The claimant has gained 10-15 pounds in the past year because she can't exercise. The claimant has a GED and two years of college with an Associate's Degree. The claimant can read and write and do basic math. The claimant was last employed as a nursing assistant at the heavy level in 2004. The claimant has also been employed as a data clerk, service clerk, reservation agent, and customer service representative.
9. The claimant's alleged impairments are bilateral osteoarthritis in the knees, shoulder, and foot, low back pain, asthma that is controlled with medication, and abscess behind the knee.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since 2004. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means, 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant underwent an independent medical consultative internist evaluation at [REDACTED]. The independent medical consultant’s diagnosis and impression was bronchial asthma, seasonal allergies/sinusitis/chronic bronchitis, obesity, hypertension, low back pain, possible disc prolapse lumbosacral area, lumbar radiculopathy, degenerative joint disease of the knees and lumbosacral spine, and fracture of the fifth left metatarsal bone with gait difficulty. The claimant has a long-standing history of bronchial asthma for which she is on multiple inhalers as a nebulizer at home. She is up-to-date on her pneumonia vaccination as well as the flu shot. The claimant has a history of chronic seasonal allergies as well as allergies to pollen and dust including hay fever. The claimant has periodic exacerbations of her bronchial asthma necessitating ER or hospital visits with the last one of which was two months prior to being seen in the clinic today. The claimant needs definite follow up on a regular basis by her family physician as well as a referral to a pulmonologist for better management of her condition. The claimant also has a history of low back pain since [REDACTED] where the symptoms were quiet until [REDACTED] when she was involved in a motor vehicle accident which apparently exacerbated her symptoms. The claimant has had three epidural blocks done since then and she continues to be symptomatic at this time and has difficulties with her daily activities at home because of her back pain. The examination does show tenderness over the lower lumbosacral area along with pain over the sacroiliac joints and also a positive SLR test bilaterally which would suggest that she has some type of lumbar radiculopathy involvement as well. The claimant needs regular follow up by her family physician as a referral to a physiatrist or an orthopedic surgeon for further management of this problem. The claimant also has hypertension for which she is on medication. Her blood pressure seems to be fairly well controlled with the current regimen. She has by history, what appears to be a low bone density for which she is on prophylactic Fosamax for prevention of osteoporosis. The

claimant recently suffered a fracture of her fifth metatarsal bone in her left foot for which she is wearing a splint/brace on her left foot. (Department Exhibit 4-10)

On [REDACTED], the claimant's treating physician from [REDACTED] submitted a letter on behalf stating that she has been a patient of hers for many years where she has poorly controlled asthma requiring chronic medication use as well as hypertension and arthritis which interferes with her ability to stand and walk for extended periods of time. (Department Exhibit 28)

On [REDACTED], the claimant was seen at [REDACTED] for a cough and congestion. The claimant was treated and released in stable condition. (Department Exhibit 25-27)

On [REDACTED], the claimant's treating specialist at [REDACTED] stated that the claimant has been a patient of his for bilateral osteoarthritis where her condition is chronic and permanent. The claimant is limited from work because of that where no significant improvement is expected. (Department Exhibit 33)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant has bilateral osteoarthritis, chronic asthma, and severe seasonal allergies. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, 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). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant does have a driver's license and does drive, but does have a fear of driving in inclement weather. The claimant does cook once a month, but has problems sitting and standing and bending for long. The claimant does grocery shop twice a month using the Amigo cart with assistance and she has a problem walking and standing. The claimant doesn't clean her own home, but does dust, cleans the sinks, and the dining table. The claimant doesn't do any outside work or have any hobbies.

The claimant felt that her condition has worsened in the past year since she broke her foot. The claimant stated she doesn't have any mental impairment.

The claimant wakes up between 8:00 to 9:00 a.m. She takes care of her personal hygiene. She watches TV and tapes or reads the Bible. She dusts and waters her plants. She makes any necessary phone calls. She has dinner of Lean Cuisine. She goes to bed between 9:00 to 10:00 p.m. She has a hard time sleeping.

The claimant was not sure how far she could walk. The claimant felt she could stand for 2-3 minutes. The longest she felt she could sit was 1-2 hours. The heaviest weight she felt she could carry was 5-10 pounds. The claimant is right handed. Her level of pain on a scale from 1 to 10 without medication is an 8/9 that decreases to a 5 with medication.

The claimant stopped smoking in 1990 where before she smoked 2 cigarettes a day. The claimant does not or has ever drunk alcohol or taken illegal or illicit drugs. The claimant felt that the job she could work would involve no lifting.

This Administrative Law Judge finds that the claimant has established that she cannot perform any of her prior work. The claimant has bilateral osteoarthritis which limits her ability to walk, stand, and bend. In addition, the claimant also has chronic asthma and severe seasonal allergies. Even though the claimant was previously employed as a typist, she would have a hard time performing that job with her environmental issues and the limitation of her knees. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The objective medical evidence on the record is sufficient that the claimant lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The claimant's testimony as to her limitation indicates her limitations are exertional.

At Step 5, the claimant cannot perform the physical requirements of sedentary to light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, an advanced age individual with a high school education and more, and an unskilled and skilled work history, who is limited to sedentary to light work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.05 and 201.06. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical impairments, the Administrative Law Judge finds that the claimant cannot perform sedentary to light activities and that the claimant does meet the definition of disabled under the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department has not appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant cannot perform any level of sedentary to light work. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The department is Ordered to determine the claimant's eligibility based on her May 9, 2008 MA-P application to December 2012.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 10, 2010 __

Date Mailed: December 10, 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.

CGF / vc

cc:

