

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: 2009-29726  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 25, 2009  
Muskegon 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 three-way telephone hearing was held on August 25, 2009. Claimant personally appeared and testified from her home telephone.

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 January 21, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 23, 2009, the Medical Review Team denied claimant's application.

(3) On April 27, 2009, the department caseworker sent claimant notice that her application was denied. Department noted that claimant's SDA continues due to her participation with [REDACTED].

(4) On May 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 30, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating that while she alleges breast cancer and hemophilia on her hearing request, no medical information concerning these conditions has been provided. SHRT denial was based on insufficient evidence.

(6) Claimant provided additional medical information following the hearing that was forwarded to SHRT for review. On September 2, 2009 SHRT concluded that the claimant was not disabled as she retains the capacity to perform a wide range of simple, unskilled, medium work per Vocational Rule 203.15.

(7) On November 2, 2009 the Administrative Law Judge received yet more medical information from the local county DHS office. This information was again sent to SHRT for review. On November 4, 2009 SHRT again determined that the claimant was not disabled, as she could perform medium work.

(8) Claimant is a 56 year old woman whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 140 lbs. after losing 7-10 lbs. due to colitis. Claimant completed high school and 2 years of college in banking and accounting classes, and can read, write and do basic math.

(9) Claimant states that she last worked in 2004 as an assistant manager for a retail outlet for 4 years, until the outlet closed due to lack of business. Claimant also performed office work, accounting work, and worked at a race track for 10 years punching tickets from a computer horse gambling.

(10) Claimant lives alone in a house she owns and supports herself with SDA and food stamps. Claimant has no driver's license as she has fines she is unable to pay. Claimant cooks, goes to the grocery store when a family member takes her, cleans her home by doing the dishes, dusting and vacuuming, and does embroidery, sewing and reading to pass the time.

(11) Claimant alleges as disabling impairments: possible breast cancer, hemophilia, anxiety, depression, colitis, and kidney problems.

#### 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 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 of record includes a September, 2005 psychiatric evaluation by CMH performed upon referral from DHS. Protective Services removed claimant’s 10 year old twins, a boy and a girl, from her custody after the claimant appeared to be suspicious, unpredictable, irrational in her behavior, scattered, and jumping from one thought to another very quickly. Claimant had psychological testing completed with a possible diagnosis of paranoid personality disorder. The report also noted substance abuse issues. Claimant has had a history of substance abuse throughout her life since age 19, and was formerly detoxed from ██████████ in 1987. She also was detoxed from ██████████ at one point. Claimant had used ██████████, ██████████, and ██████████ in her youth. Claimant has a tendency to have panic attacks when in public places, and these are most prominent when she is having to face a public authority, such

as in a courtroom. Claimant was currently required to attend anger management classes, apparently because of an argument with police who were coming to her home to check on child welfare issues. Claimant was diagnosed with adjustment disorder with anxious and depressed mood, and current GAF of 60.

Community Mental Health (CMH) psychosocial assessment of January 12, 2009 states that the claimant showed up because she ran out of the medications that had been prescribed for her when she was at a hospital in November, 2008. Hospital involuntary stay was prompted by the claimant being delusional and paranoid at the time. Claimant had not slept for 5 days prior to her admission, and was diagnosed with bipolar with psychotic features. Claimant has no way to pay for her medical treatments or prescriptions. Claimant has little insight into her diagnosis and missed her aftercare appointment after the November, 2008 hospital admission. Claimant's mental status showed she was spontaneous and logical, her speech was clear, her emotional range was appropriate, and thought process was normal. Claimant has had problems with anger management in the past.

CMH progress note of March 16, 2009 states that the claimant has a longstanding history of bipolar disorder. Claimant was admitted to a psychiatric hospital on November 22, 2008 and discharged in early part of January, 2009, after an extended stay where she was hospitalized involuntarily. This was claimant's second psychiatric hospitalization, first one being in 1987, when she was going through drug withdrawal. Claimant's file also contains 1973 outpatient psychiatric evaluation at which time drugs were involved including opiate narcotics and marijuana. Claimant has not used drugs in over 20 years and is drug free.

Claimant was nicely and neatly dressed, with good attention to her makeup. Claimant stated her mood is quite stable these days, despite everything else. Claimant's affect initially

was anxious and apprehensive but did seem to relax as the session went on. There was no evidence of any thought disorder, thinking was quite clear and relevant, goal directed, and claimant denied any perceptual disturbances. There was no evidence of any underlying psychosis or delusional thinking, and claimant denied any suicidal or homicidal ideations. Claimant's diagnosis is that of bipolar disorder, most recent episode manic, severe with psychotic features, with GAF of 57. Claimant's treatment plan is to continue psychiatric medications, namely Effexor and Seroquel, and to start Klonopin.

At June 30, 2009 CMH visit claimant continues to grieve over death of her sister several months ago. Claimant's speech was normal rate and tone, her mood seem fair, and she denied any perceptual disturbances, suicidal or homicidal ideation.

Claimant was seen on March 31, 2009 for a medical follow-up. Claimant had an abnormal mammogram with suspicious calcifications on the left breast, and biopsy was recommended, but the surgeon requested clearance by hematologist for surgery, due to claimant's platelet clotting disorder. Hematologist was unwilling to give surgical clearance for breast biopsy, as the claimant had previously been given platelets as well as fresh frozen plasma and did not have correction of her clotting time with those blood products. Hematologist is unclear of etiology of platelet function disorder but states the claimant has a definite platelet function disorder. Claimant also has very sparse teeth with dentures and continues to have mouth pain and ulcerations.

Claimant was seen on April 28, 2009 for complaint of severe left knee pain, and was asking for medications to take for pain. Claimant was noted to have pressure of speech today with tangential thinking, demanding medications, demanding answers to questions, and stating she is unable to live in pain. Some evidence of hypomania was noted.

On July 6, 2009 claimant was admitted to the hospital with acute onset of abdominal discomfort, distention, pain, diarrhea and syncopal episode. CT scan of claimant's head revealed no acute intracranial process. A colonoscopy and biopsy resulted in a diagnosis of ischemic colitis. Claimant also had a workup for hypercoagulability. Previous workup for a bleeding disorder did not reveal any reason for the bleeding except that the claimant had a platelet function problems. Claimant was also seen by psychiatry who made psychiatric medicine recommendation, Klonopin three times per day, continue with [REDACTED] and recommended stopping her [REDACTED]. Claimant was discharged in stable condition with discharge diagnosis of hypovolemic shock-resolving, ischemic colitis-resolving, acute renal failure-resolved, bipolar disorder, hepatitis C, breast mass (with outpatient workup ongoing) and pancytopenia.

On July 27, 2009 claimant came in to CMH for an emergency appointment, as she had used up her supply of [REDACTED]. Claimant was supposed to run out in another week, but has been stressed out and taking a lot of [REDACTED]. She has also been highly anxious, and presented on this day seemingly overmedicated. Claimant was given another prescription of [REDACTED] and agreed with the plan to gradually cut down on the dose.

Claimant was seen in the emergency room on August 4, 2009 for complaint of abdominal problems. Claimant also reported pain in her left breast and a history of calcifications and a lump in her breast. Claimant also reported a history of present ischemic colitis, but no further bleeding from the rectum. Claimant's lab reports were reviewed and they were normal. Claimant was given a shot of [REDACTED] and medication to use at home, and advised to follow up with her own doctor. Claimant was discharged in stable condition.

Medical evidence has not 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 not met her burden of proof at Step 2, and could be denied at this step.

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 the claimant has the ability to perform past relevant work. Claimant's past relevant work was working for a retail outlet as an Assistant Manager for 4 years up to 2004, doing office work, and working at a race track for 10 years handling horse gambling. Claimant has had psychiatric hospitalization in 1987 as a result of substantial drug abuse. Claimant had psychiatric issues in 2005 after her two children were removed from her home by Protective Services, and was referred to CMH for treatment. Claimant was hospitalized in November, 2008 for 5 days due to psychiatric issues after she had not slept for 5 days. Claimant's record shows sporadic visits with CMH and no evidence of serious psychiatric disturbance as long as she takes her medications. Claimant's CMH visits reveal her frustration with her financial state. Claimant has physical issues but evidence of record does not indicate that they would significantly affect claimant's ability to perform past job functions. 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 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 she cannot perform sedentary and light work, or possibly even medium work. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is 56), with college education (claimant testified she had 2 years of college in banking and accounting and records provided quote the claimant as saying she has a bachelor's degree) and a skilled or semi-skilled work history (claimant was a manager for a retail outlet and did office work and accounting work in the past) who can perform even only light work is not considered disabled pursuant to Medical-Vocational Rule 202.07. Claimant should be able to perform medium work.

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. It is noted that the claimant was an MRS client at the time of the hearing and receiving SDA based on such involvement.

#### 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 12, 2010

Date Mailed: April 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.

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