

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: 2009-34538
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 13, 2009
Emmet 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 13, 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 April 3, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 9, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 11, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 17, 2009, the State Hearing Review Team again denied claimant's application stating she was capable of performing past work per 20 CFR 416.920(e), citing claimant's past work as a phone operator, a sedentary type of work.

(6) Claimant is a 35 year old woman whose birthday is May 24, 1974. Claimant is 5'8 ½ " tall and weighs 196 lbs., after losing 174 lbs. due to gastric bypass in March, 2003. Claimant has a high school diploma and 1 year of college in medical classes towards a nursing degree, and can read, write and do basic math.

(7) Claimant states that she last worked in January, 2009 at a home health care when she suffered an injury to her shoulder, knee and ankle due to a client running over her foot with a wheelchair. Claimant was denied Worker's Compensation benefits due to an alleged pre-existing condition and has an attorney contesting the denial. Claimant had worked in the health care field for 6 years, at an inn as an overnight manager filing, and as a customer service representative in a phone center.

(8) Claimant currently lives in a separate apartment in relative's home, has no income and is being helped by friends and relatives, and gets food stamps. Claimant has a driver's license and drives couple of times per week to the grocery store and to see her grandmother,

cooks, cleans her apartment, and spends her time watching TV and reading and using her lap top computer while lying down in bed.

(9) Claimant alleges as disabling impairments: fibromyalgia, left shoulder pain due to left rotator cup tears, right knee and right ankle pain, and severe depression.

(10) Claimant has applied for Social Security disability and been denied, and plans to appeal 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 he has not worked since January, 2009. 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 an x-ray of claimant’s lumbosacral spine of January 11, 2008 which was normal. MRI of claimant’s lumbar spine of the same date shows no evidence for focal disc protrusion nor canal stenosis at any level.

September 17, 2008 doctor visit states that the claimant is in for recheck of her multiple medical problems. Claimant reported still having a lot of fibromyalgia pain, but not withdrawal symptoms from her discontinuation of her morphine products. Claimant wanted more Percocet, stated “it was written wrong”, that on 9/2 she only picked up 5 of the #60 tablets written at [REDACTED] and then on 9/6 picked up a prescription of 120 tablets at [REDACTED]. However, [REDACTED] stated that she picked up 60 tablets at that time. Claimant also stated that she is out of the Percocet now because she woke up one morning with juice in a cup with a sludge of pills at the bottom and her Percocet bottle empty next to her, as well as her Ativan bottle and Soma tablets. Claimant wanted refills of all her medication. Claimant reported her fibromyalgia pain to be about the same, her GERD symptoms remain stable, her appetite is improving overall, and she did not describe any of her orthopedic concerns that she has brought up in the past. Claimant’s diagnosis is narcotic withdrawal, currently stable, multiple psychiatric/psychological disorders including depression, probable borderline personality disorder with somatoform features, emerging probability of chronic lying, restless leg syndrome, post-gastric bypass

anemia, post-gastric bypass B12 deficiency, sleep apnea, under subspecialty care, stress gastritis, and sacral pain. Narcotic policy was discussed with the claimant, she was told she must use 1 pharmacy only and that no out of state prescriptions can be provided.

Claimant was seen again on October 21, 2008 after she moved to [REDACTED] to live with her sister for a brief period of time, but this did not work out. Claimant appeared fatigued and sedated, often with her eyes closing during visit in a somnolent fashion. There was no obvious seizure type activity. Claimant ambulated without difficulty other than her somnolence and was able to answer questions fully. Claimant was highly encouraged to follow up with Community Mental Health (CMH), and if not, she understood she may not be seen again due to lack of following medical advice.

Claimant was in the doctor's office on November 18, 2008 asking for refills of "all her medications". Claimant had not been seen by CMH.

A February 27, 2009 MRI of claimant's right knee due to complaint of right knee pain impression is that of osteoarthritic-type change of the knee, small joint effusion, and intact cruciate and collateral ligaments and menisci. X-ray of claimant's knee of February 5, 2009 suggests minimal degenerative change without acute abnormality. MRI of claimant's right ankle of February 24, 2009 shows no fracture or dislocation. X-ray of claimant's left shoulder of February 24, 2009 shows incomplete fracture. MRI of claimant's shoulder of March 3, 2009 when compared to the MRI of February 7, 2006 indicates a partial undersurface tear of the distal rotator cuff without labral tear. Claimant had a technically successful fluoroscopic-guided left shoulder injection prior to the MRI.

April 8, 2009 doctor's visit indicates that the claimant is a Workman's Compensation patient following her January 22, 2009 injury at her home care job where she describes the

patient running over her foot with a wheelchair. Claimant stated she twisted her right ankle, twisted the right knee, apparently landed on the right knee and then braced herself with her left arm, actually hitting the elbow and “jamming her shoulder”. Claimant reports her biggest concern being her left shoulder, as she continues to have pain with any attempt at abduction in the shoulder joint itself, feeling like it is a “jammed finger that needs to be pulled”. Claimant is receiving physical therapy but is not on any anti-inflammatories. Claimant’s right ankle is her second biggest concern, and she was initially in the air splint for an apparent ankle sprain. Ankle x-rays were unremarkable for fracture. Claimant was witnessed to ambulate in and out of the office without difficulties previously. Claimant reported that her fibromyalgia symptoms maybe have flared up somewhat, but remain stable on her Cymbalta.

On physical examination claimant’s left elbow appears normal, she had good distal pulses, refill, sensation and grip strength equal bilaterally. Claimant’s lumbar spine was nontender to palpation. The right knee could be put through good complete range of motion. Claimant was encouraged to continue with her physical therapy for her left shoulder. Claimant was making progress with her right knee strain and was to continue physical therapy for that also.

Claimant was at the emergency department on April 18, 2009 with complaint of back pain. Claimant stated that she does not have a doctor that can prescribe pain medications, and that she went to a free clinic a week ago and they said that they would not give her any pain medicine. On physical examination claimant was alert and oriented x3 and in no distress. Claimant had diffuse lower lumbar tenderness and paraspinous musculature tenderness, but her muscle strength was equal and bilateral 5/5 including great toe extension. Claimant appeared to be neurologically intact. The Michigan MAPS was accessed and it displaced 9 pages of

information showing that for the last month claimant received 150 oxycodone. When questioned about this, claimant seems to have an excuse for every question as far as narcotic dosages, and in the doctor's opinion she seems to be receiving excessive amount of narcotics. Doctor agreed to give the claimant a very limited supply of medications and told her that she will not be given any more medications, and that she should not come to the ER expecting narcotic refills or demands for narcotics. Claimant was given Vicodin and Flexerol.

Claimant had a rheumatoid arthritis panel done on July 3, 2007 with negative rheumatoid factor.

Claimant was seen at Community Mental Health (CMH) on January 13, 2009 stating she wanted to deal with her underlying depression and have individual therapy. Claimant reported being treated for her fibromyalgia for the past 4 years and becoming dependent on Kadin (a morphine derivative). Claimant was taken off Kadin in August, 2008 and had severe withdrawal, and had to be placed in the hospital to deal with withdrawal symptoms. Claimant denied any past psychiatric hospitalizations. Claimant reported having a gastric bypass about 6 years ago and believed that the onset of her fibromyalgia came about a year after the bypass, as she may have taken up too many physical activities. Claimant had normal speech, flattened affect and subdued and anxious mood, but no perceptual distortions. Claimant had adequate abstracting ability, her thought process was relevant and spontaneous, and she had no formal thought disorder. Claimant was fully oriented with some recent past memory impaired which she claimed was due to fibromyalgia, but with adequate concentration. Claimant denied suicidal or homicidal ideations and had no reported history of violence. Claimant noted she had been overmedicated by her doctor and that she is withdrawing. Claimant was diagnosed with

depressive disorder NOS, opioid dependence in early full remission, and borderline personality disorder. Claimant's GAF was 56 indicating moderate symptoms or difficulty in functioning.

May 15, 2009 orthopedics report quotes the MRI from February, 2009 showing moderate right knee arthritis as well as knee cap changes. Claimant's ACL and meniscus are okay. Claimant's knee joint seems okay when the films are reviewed with no evidence of any subluxation. The x-rays on the computer of claimant's right knee reveal no fracture, mass or degenerative arthritis, the joint space looks okay, and four-view x-rays of her ankle reveal no fracture, mass or degenerative arthritis as well. On examination claimant states she is tender and sore in her right knee and her pain is diffuse and seems to migrate. Claimant's calf is soft and nontender, she is neurovascularly intact at her toes, and she has no obvious knee cap apprehension, although again she is sore throughout her knee. There is no obvious effusion, cellulitis, or evidence of any infection. Claimant also reports soreness in her right ankle, but the ankle appears stable and she is neurovascularly intact at her toes. Claimant's pain does seem to be out of proportion to the exam, as even light touch gives her significant pain which does not appear to be anatomically based. Claimant was given some knee strengthening exercises as well as ankle strengthening. More aggressive intervention is not recommended, and surgical intervention is certainly not recommended.

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.

There is no evidence in the record indicating that claimant suffers mental limitation. 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 working as a health care aide, customer service representative in a phone center, and overnight manager at an inn. Claimant's medical record does not support a finding that she was indeed severely injured in January, 2009 as she claims, to the point that she can no longer work as a health care aide. Even if that was true, claimant can perform sedentary type work such as a customer service rep in a phone center. 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 [REDACTED] [REDACTED]... 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 sedentary work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform sedentary work at the very least. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is age 35), who is illiterate or unable to communicate in English (claimant has a high school diploma and 1 year of college) and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23. Claimant has substantial work history.

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 sedentary work at the very least 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 18, 2010

Date Mailed: May 19, 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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