

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: 2009-36785
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 4, 2009
Roscommon 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 November 4, 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 retroactive MA?

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 June 24, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On July 22, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On July 23, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 1, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating impairment lacks duration per 20 CFR 416.909.

(6) Claimant indicated at the hearing that she had additional medical information to submit, and record was extended for 90 days. Additional information was received upon expiration of the extension and submitted to SHRT for review.

(7) On February 8, 2010 SHRT once again denied claimant's application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, medium work, and used Vocational Rule 203.14 as a guide.

(8) Claimant is a 56 year old woman whose birthday is [REDACTED]. Claimant is 5' tall and weighs 148 pounds. Claimant completed 12th grade and can read, write and do basic math.

(9) Claimant states that she last worked in 1995 for a month but developed disabling migraines and could not work. Claimant received SSI from 2001 to 2008 when these benefits stopped due to her husband's income exceeding SSI income limits.

(10) Claimant lives with her husband. According to Activities of Daily Living form claimant completed in June, 2009, she is independent in taking care of her personal needs, fixes all of her meals, does regular housekeeping with husband's help, goes grocery shopping twice per month, and reads and watches TV.

(11) Claimant alleges as disabling impairments brain tumor, hypertension, thyroid, pancreatitis, deep vein thrombosis (DVT), and depression.

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 (RFT).

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 1995. 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 hospital Discharge Summary of August 27, 2008 where the claimant came to the emergency room because she has had a headache that started 3 days ago and it was severe. Claimant has had an epidermoid cyst near the brain stem in the past and has had surgery in 1986 and 1998. CT scan of claimant's head was performed and it showed a tumor in the left cerebellopontine angle with a density with small mass effect. No hemorrhage was seen at the time. Diagnosis was that of brain tumor with mass effect and claimant was to be transferred by helicopter to [REDACTED].

Claimant was seen for chief complaints of headaches and anxiety on November 6, 2008 and admitted to being under enormous amount of stress and that she feels quite anxious now all the time. An MRI imaging of claimant's brain was ordered. In January, 2009 claimant was seen again and impression and plan included chronic back pain, headaches the doctor thought are mostly migrainous in nature and not related to her previous cyst as MRI has been reassuring, anxiety for which she will continue on Celexa, hypertension which was under good control, and hypothyroidism. It was noted that the claimant has not had any recurrence of panic attacks since late last fall. MRI of July 11, 2008 was reviewed and showed significant multilevel degenerative changes and moderate right lateral recess stenosis of the L5-S1 level.

In May, 2009 claimant had a CT of abdomen and pelvis due to abdominal pain and recurrent diarrhea that showed status post cholecystectomy and hysterectomy and moderately severe diverticulosis. Claimant was admitted to the hospital for 3 days and discharged with a diagnosis of recurrent acute diarrhea for last 6 months with instructions to follow up with a clinic in one week.

A Medical Examination Report for an examination of June 19, 2009 states as claimant's current diagnosis mild degenerative disc disease, migraines/headaches and depression. Claimant was 5'1" tall and weighed 164 pounds, and her blood pressure was 117/82. All of claimant's examination areas were normal except abdominal as she was under study due to chronic diarrhea for which cause was to be determined, and mental as she presented in depressed mood, very anxious and crying easily. Claimant's condition was stable, she was limited in lifting/carrying up to 20 pounds occasionally, had no standing/walking and sitting limitations, could use both hands/arms for repetitive actions and also use both of her feet/legs for operating foot controls, and had no mental limitations.

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 recurrent headaches, has had recurrent brain tumors that had to be drained, has degenerative disc disease, suffers from bouts of diarrhea, is depressed and anxious and cries easily. Such impairment(s) have lasted 12 months. Claimant has therefore met her evidentiary burden of proof at Step 2 and analysis continues to Step 3.

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 claimant has no significant work history and has not worked since 1995. Claimant therefore cannot be denied based on her ability to perform past relevant work.

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 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. However, claimant is not disqualified from receiving disability at Step 5. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is 56 years of age), with high school education and an unskilled or no work history who can perform light work is considered disabled pursuant to Medical-Vocational Rule 202.04.

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). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is 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 disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the department improperly denied claimant's June 24, 2009 MA and retroactive MA application.

Therefore, department's decision is REVERSED. Department shall:

1. Re-process claimant's disputed June, 2009 MA and retroactive MA application and grant her any such benefits she is otherwise eligible for (i.e. meets other financial and non-financial eligibility requirements).
2. Notify the claimant in writing of this decision.
3. Review claimant's continuing MA eligibility in July, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

/s/

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

Date Signed: June 29, 2010

Date Mailed: June 29, 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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