

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: 2010-10500
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 2010
Jackson 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 February 4, 2010. 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 July 10, 2009, claimant filed an application for Medical Assistance and retroactive MA benefits alleging disability. Claimant is receiving State Disability Assistance benefits based on being a [REDACTED] client.

(2) On August 6, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work per 20 CFR 416.920(E).

(3) On August 20, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On October 22, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 16, 2009, the State Hearing Review Team (SHRT) again denied claimant's application citing insufficient evidence and requesting a complete physical examination.

(6) Additional medical information was obtained and forwarded to SHRT for review. On May 26, 2010 SHRT determined that the claimant retains the physical residual functional capacity to perform sedentary exertional work. The claimant's past work was sedentary, semi-skilled in nature, and she therefore retains the capacity to perform her past relevant work per 20 CFR 416.920(e).

(7) Claimant is a 54 year old woman whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 210 pounds. Claimant completed 1 year of business school and has a secretarial certification, and can read, write and do basic math.

(8) Claimant is not currently employed and last worked in July, 2008 as home help aid for 10 months, but could not lift clients so she quit. Claimant has also worked at a call center in customer service from June, 2004 to July 2005, but was fired due to missing too much work because of bad circulation and leg ulcers. Claimant worked for a bank from December, 1998 to 2003 doing data entry, filing and other office duties, job she was laid off from due to lack of work.

(9) Claimant lives alone in a low income housing apartment and receives SDA and food stamps. Claimant stated she has never had a driver's license and gets around by taking the bus to grocery shop, etc. Claimant cooks, does some house cleaning, and reads, bakes, and watches TV to pass the time. Claimant can bathe and dress herself, sit and stand for 30 minutes, and walk for 6 blocks according to her hearing testimony.

(10) Claimant alleges as disabling impairments: back pain with scoliosis, hypertension and lower extremity venous insufficiency.

(11) Claimant has applied for Social Security disability and been denied.

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, that being a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe” (20 CFR 404.1520(c) and 416.920(c)). 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). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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). 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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration

requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, claimant is not engaged in substantial gainful activity and testified that she has not worked since July, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering the claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce the claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence on the record includes an independent medical evaluation of [REDACTED] for [REDACTED] states that the claimant was terminated from her employment as a home health aid in July, 2008 because an elderly patient had complained that she was not physically able to handle him. Claimant has significant problems with prolonged sitting or standing, and has a long history of back pain since childhood and very severe scoliosis. Claimant was placed in a back brace for two years at age 12 and 13. Claimant

also had left leg ulcers several years ago that took many months of treatment to heal up, and were felt to be secondary to venous insufficiency and venous stasis. Claimant stated that her back will hurt if she stands for greater than one-half hour or sits for greater than two hours, and that she is limited as to what she can lift physically. Claimant was not on any medications and has no health insurance. Physical examination revealed an obvious deformity of claimant's upper back. Claimant has a very severe scoliosis with a marked prominence of her right scapula and marked distortion of her spine. She has markedly restricted range of motion of her back secondary to the deformity with decreased extension and decreased right lateral flexion and rotation. Claimant's blood pressure was 160/110, and while she had a history of hypertension and was on medication for six months, she could not afford the medication and has not had any blood pressure medications for over last two years. Claimant had normal range of motion of her neck, shoulders, elbows, wrists, and hands, as well as hips and knees. However, she has very severe venous insufficiency of her lower legs and areas of severe scarring with tissue loss in her left lower leg, especially medially. Claimant can squat, toe-walk, and heel-walk. Claimant had an unremarkable neurologic exam. Impression was that of chronic back pain with severe scoliosis, uncontrolled hypertension, and severe venous insufficiency of the lower extremities with venous stasis ulcers which have healed. Claimant has significant disabilities related to severe deformity of her back. Because of this, as well as some radicular symptoms that she is experiencing now into the right inguinal area, as well as her very severe venous stasis insufficiency and uncontrolled hypertension, the examiner believes the claimant would be limited in her ability to lift no more than 15 pounds. Claimant would also not be able to do any significant twisting or bending, has limitations in her ability to do any prolonged sitting or

standing and she would have to change positions. Conclusion is that the claimant has some significant disabilities which would impact her ability to perform many different jobs.

Internal medicine evaluation of January 21, 2010 states that the claimant's back shows significant deformity with severe scoliosis, and the right side of the back is bulging outward. Claimant's body is bent sideways. There is tenderness on palpation of the thoracic and lumbosacral spine with paraspinal muscle spasms and decreased range of motion due to pain. Claimant reported that if she sits for more than 15 or 20 minutes her back hurts and throbs, standing for 15 minutes causes severe back pain, and she has difficulty bending down or lifting heavy things. Claimant has also had right knee pain for about one year and has severe bursitis, and continues to have discomfort in the knee if she stands or walks for long. Assessment is that of hypertension, back pain with severe scoliosis, right knee pain, and poor circulation in the lower extremities as reported by the patient.

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's condition has lasted 12 months. Claimant has therefore met her evidentiary burden at Step 2 and analysis continues.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. 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 is of the opinion that the claimant cannot perform her past relevant work. Claimant was a home help aid in 2008, job she had to quit because she could not perform it physically. Claimant also had sedentary jobs in customer service and in a bank from 1998 to 2005. Claimant had leg ulcers in 2005 due to poor circulation and missed too much work. While the claimant's ulcers had healed, she still has lower extremity venous insufficiency. This coupled with claimant's severe back issues which impact her ability to sit for extended periods of time would make her unable to perform her past jobs. Claimant is therefore not capable of performing her 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], published by 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 sufficient 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 even sedentary work. While the claimant does have some sedentary skills, her most recent job that involved such skills ended because she had circulation problems and leg ulcers. For the claimant to perform customer service jobs in a call in center such as she did in 2005 she would have to sit for extended periods of time. Claimant's medical record indicates that she has a severe back deformity and that sitting for more than 20 minutes causes her pain, as well as

walking, bending, etc. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has no residual functional capacity to perform other work. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that she has established by objective medical evidence that she cannot perform even sedentary work.

In conclusion, 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). 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 upon the above findings of fact and conclusions of law, decides that the department has inappropriately determined that the claimant is not disabled for MA and retroactive MA eligibility purpose.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed MA and retro MA July 10, 2009 application and grant her any such benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Review claimant's continuing medical eligibility in November, 2011, at which time updated medical records are to be provided.
3. Notify the claimant of this determination in writing.

SO ORDERED.

/s/

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

Date Signed: October 28, 2010

Date Mailed: October 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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