

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-14899
Issue No: 2009; 4031

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris for 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 10, 2010 by Administrative Law Judge [REDACTED], who has since left employment with the State Office of Administrative Hearings and Rules. This hearing was completed by Administrative Law Judge [REDACTED] and personally appeared [REDACTED] and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retro MA 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 August 18, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On September 21, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of performing other work pursuant to Vocational Rule 201.22.
- (3) On September 23, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On November 30, 2009, claimant filed a request for a hearing to contest the department's negative action.

- (5) On January 14, 2010, the State Hearing Review Team again denied claimant's application stating that the claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence indicates that the claimant retains the capacity to perform a wide range of light exertional work with no psychiatric limitations. Vocational Rule 201.21 was cited.
- (6) A telephone hearing was held on February 10, 2010. The record was left open to allow the submission of additional medical evidence, with time limits being waived by the claimant.
- (7) The additional medical information was submitted on February 16, 2010 and sent to the State Hearing Review Team on February 17, 2010.
- (8) On February 24, 2010, the State Hearing Review Team again denied claimant's application stating that while the claimant is restricted in overhead reaching of the left upper extremity, that she is capable of performing work that is light and unskilled, pursuant to Vocational Rule 202.21.
- (9) On May 18, 2010, the claimant's representative submitted additional medical information. This was sent to the State Hearing Review Team on June 2, 2010.
- (10) On June 8, 2010, the State Hearing Review Team again denied the claimant's application stating that the claimant's impairments do not meet/equal the intent or severity of a Social Security listing and that the medical evidence indicates that claimant retains the capacity to perform unskilled, light work avoiding jobs that require frequent overhead reaching with the left upper extremity. Vocational Rule 202.20 was cited.
- (11) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant testified that she is 5' 4" tall and weighs 190 pounds. Claimant completed high school and one year of college, earning a nurse's aid certification. Claimant reports that she can read and write and do basic math.
- (12) Claimant reports that she last worked in 2003 as a [REDACTED]. She claims experience in caring for disabled and elderly individuals.
- (13) Claimant alleges as disabling impairments: diabetes, hypertension, asthma, arthritis, carpal tunnel syndrome, fibromyalgia, sleep apnea and chronic pain.

- (14) Claimant resides alone. She has a driver's license, but states that she will only drive to appointments and the store, but that her daughter and mother will drive if needed. Claimant reports that she cooks light meals, can grocery shop with assistance, but does not clean her house. Claimant reports that she sleeps a lot, reads, teaches Sunday school, attends church and watches television. Claimant reports that she smokes about a pack per week.

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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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.

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).

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 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.

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).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2003. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, 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)). There must be a medically determinable physical or mental 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. 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 indicates that the claimant has a history of type II diabetes, chronic neck/back/shoulder pain, arthritis, hypertension, asthma, fibromyalgia, and depression.

An independent medical examination was conducted at the [REDACTED] on March 18, 2009. The examination found the patient to have blood pressure of 130/70,

no edema, cyanosis or clubbing of extremities and a normal musculoskeletal system. The claimant was assessed with type II diabetes mellitus, but stated that her blood sugars were running okay at home. Claimant was found to have COPD, asthma-type, but was stable; hypertension; blood pressure controlled; hyperlipidemia; lower extremity edema and a history of depression.

An April 28, 2009 radiology report found no acute cardiopulmonary process and early degenerative features of the left hip.

On May 5, 2009, the claimant's Primary Care Physician (PCP) completed a chronic pain residual functional capacity questionnaire. The examination found decreased range of motion in her left shoulder. Patient would need a job which permits shifting positions at will from sitting, standing and walking, would need to take unscheduled breaks, may occasionally lift less than 10 pounds (maybe up to 20 pounds), could not perform repetitive reaching with the left arm, but should be alright to grasp, turn and twist objects and perform fine manipulation with her fingers.

A May 13, 2009 examination showed the claimant had a history of a frozen shoulder on the left for which she underwent orthopedic manipulations under anesthesia to free the adhesions. However, she remained in pain, was not able to maintain the range of motion and was unable to participate in physical therapy. Trigger point injections were regularly done to her left shoulder, and she reported some relief, but her pain continued. The range of motion was normal to all areas except the left shoulder, client had severe pain with lifting the left hand above her chest level, so active range of motion was at best 100 degrees forward flexion and 90 degrees abduction at the left shoulder, range of motion of the cervical spine was full and she was able to flex her head and read her weight on the portable floor scale. Her gait was normal (equal swing and stance), she could step climb, heel to toe walk and full squat without assistance. The doctor opined that the claimant's left arm is very weak at the shoulder girdle so she would have problems lifting even from the table to her chest and is was doubtful that she could lift even one pound with the left hand in a vertical direction.

A July 20, 2009 evaluation by an orthopedic surgeon found claimant's bilateral hand grip, biceps, triceps and shoulder abduction strengths against resistance were fair to poor bilaterally, left being weaker; active right shoulder forward flexion was to about 90 – 95 degrees, compared to only about 80 – 85 degrees on the left. Bilateral quadriceps, great toe flexion and extension and hip rotational strengths against resistance were fair and equal bilaterally; claimant's range of motion was about 60 – 70% of normal in the left hip.

A July 24, 2009 MRI of the lumbar spine showed broad base bulging of the disc (left greater than right) at L4 – L5 with associated mild to moderate central spinal stenosis and broad based bulging versus protrusion of the disc on the right at L5 – S1 posteriorly displacing the right S1 nerve root.

An August 24, 2009 examination by the claimant's PCP found the claimant to be stable, with some physical limitations, but no mental limitations. Physical limitations were specified as standing and/or walking less than two hours in an 8 hour workday, sitting less than 6 hours in an 8 hour workday.

An October 20, 2009 evaluation by a foot specialist found the claimant had tenderness in the left lateral side of the foot. The claimant was diagnosed with bursitis in the foot and was given cortisone injections. On November 17, 2009, the claimant reported that she was doing a lot better after the injection.

The claimant treated with a pain clinic in [REDACTED]. Claimant was initially evaluated on March 9, 2010. Examination found the claimant to be pleasant, oriented to time, place and person, intact recent and remote memory with good mood and affect. The physical examination areas were essentially normal except for the musculoskeletal portion of the exam, which found the claimant with restricted range of motion of her cervical spine with flexion, extension and rotation. She also had restricted range of motion of her lumbar spine with flexion and extension. Claimant had areas of pain across the neck, upper back, lower back and shoulder. Claimant had markedly decreased range of motion of the left shoulder, particularly with abduction. The claimant was advised to lose weight and involve herself with aquatic therapy. On April 7, 2010, she received an L4 – 5 epidural steroid injection to help with her back pain. The claimant was again advised to lose weight and work on conditioning.

At Step 2, claimant's arthritis, fibromyalgia and shoulder/back pain, in combination, have left her with some range of motion limitations and pain. The claimant's diabetes, hypertension, sleep apnea and asthma appear to be quite well controlled. It is noted no severe mental impairments have been shown as the claimant's depression also appears to be under good control through medication. The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's physical impairments meet the *de minimus* level of severity and duration required for further analysis.

The analysis next proceeds to Step 3, where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

The analysis then proceeds to Step 4, which is an evaluation of claimant's ability to perform her past relevant work. The claimant has a work history as a nurse's aide with mentally/physically handicapped individuals and the elderly. There is sufficient objective medical evidence to determine that the claimant could probably not perform her previous work as her physical limitations would prevent her from performing some of the duties (specifically lifting and reaching). Thus, the claimant is not denied from receiving disability at Step 4.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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 some light or sedentary work even with her impairments. Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a younger individual (age 47), with a high school education or more, with a history of unskilled or semi-skilled work is not disabled, pursuant to Vocational Rule 202.20 and 202.22.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause there will not be a finding of disability.... 20 CFR 416.930 In this case, the claimant has repeatedly been advised to lose weight, engage in physical activity to condition herself (i.e. aquatic therapy) and stop smoking. Claimant is not in compliance with these recommendations and her treatment program. There is evidence that if the claimant complied with her physician's recommendations, this would greatly reduce the severity of her pain.

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. The objective medical evidence presented does not substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. 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, p. 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

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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 range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

_____/s/_____
Suzanne L. Morris
Administrative Law Judge
On behalf of Ivona Rairigh
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/17/11

Date Mailed: 3/17/11

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.

[REDACTED]