

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.: 2010-17578
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 24, 2010
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted from Sterling Heights, Michigan on Wednesday, March 24, 2010. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] and [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking Medical Assistance (“MA-P”) benefits retroactive from October 2009 on November 9, 2009. (Exhibit 1, pp. 1, 2)
2. On January 7, 2010, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 1, 2)
3. On January 12, 2010, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 2)
4. On January 22, 2010, the Department received the Claimant’s written Request for Hearing. (Exhibit 3)
5. On February 19, 2010, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled. (Exhibit 4)
6. The Claimant’s alleged physical disabling impairment(s) are due torn rotator cuffs, shortness of breath, high blood pressure, stroke with brain hemorrhage and residual effects of vertigo, double vision, headaches, memory loss, left side numbness, and speech difficulty.
7. The Claimant has alleged mental disabling impairment(s) due to anxiety associated with her pain.
8. At the time of hearing, the Claimant was 49 years old with an [REDACTED] birth date; was 5’2” in height; and weighed 120 pounds.
9. The Claimant is a high school graduate with some college with a work history as a sales associate and teaching assistant.
10. The Claimant’s impairment(s) has lasted, or is expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formerly known as the Family Independence Agency, 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 Bridges Program Glossary (“BPG”).

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4)

the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation

in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As discussed above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical and mental disabling impairment(s) due to torn rotator cuffs, shortness of breath, high blood pressure, stroke with brain hemorrhage and residual effects of vertigo, double vision, headaches, and memory loss, left side numbness, speech difficulty, and anxiety. In support of her claim, records from 2008 were submitted which establish treatment due to an abnormal left ventricular hypertrophy and dilated left atrium. A cardiac Doppler and color flow imaging revealed trace mitral regurgitation of no hemodynamic significance.

On [REDACTED], the Claimant arrived at the emergency room after being found on the ground with significant slurred speech. A CT scan of the head demonstrated a brain stem hemorrhage. The Claimant was intubated and transferred via Survival Flight to another hospital's ICU. On [REDACTED], the resulting deficits due to the hemorrhagic pontine stroke were right side hearing loss, right sided facial droop, right sided VI palsy, dysphagia, and left side upper and lower extremity weakness. The Claimant continued to receive in-patient physical and speech therapy. On [REDACTED], the Claimant was discharged with the diagnosis of

posterior central pontine intraparenchymal hemorrhage secondary to transient ARI and complicated by hypertension. The Claimant was to continue physical and speech therapy.

On [REDACTED] through [REDACTED], the Claimant attended physical and speech therapy. The Claimant experienced difficulty walking due to her stroke and residual left hemiparesis. On [REDACTED], the Claimant did not meet any of the established goals thus the treatment plan was recertified.

On [REDACTED], the Claimant's long-term primary care physician submitted a medical source statement concerning the nature and severity of the Claimant's physical impairment(s). The Claimant's prognosis was guarded with an estimated pain level of between 6 and 10. The Claimant was restricted to sitting of 0-2 hours during an 8 hour workday with standing and/or walking at the same level. The Claimant was found medically unable to sit continuously in a work setting and she was unable to lift any weight and had significant limitations performing repetitive actions with her extremities. Further, the Claimant was unable to stoop, push, kneel, pull, bend, and had psychological limitations which would impact her ability to work on a full-time basis. Ultimately, the treating physician opined that due to the severe CVA, the Claimant would have "a lot of difficulty handling her medical problems..." The Claimant was found unable to work with a possible lifetime of symptoms and limitations.

On this same date, [REDACTED], a Functional Capacity Questionnaire was completed by the Claimant's treating physician. The current diagnoses were hypertension, GERD, posterior central pontine hematoma resulting in left side neuropathy. The Claimant's impairment(s) were expected to last more than 12 months and she was limited to standing/sitting/walking 0-2 hours; unable to lift/carry any weight; able to occasionally perform fingering and grasping with her right hand only; and experiences severe pain frequently. The Claimant requires an assistive

device due to sensory loss, muscle weakness, and reduced range of motion. The physician opined that the Claimant was unable to work and was completely disabled due to the stroke.

On [REDACTED] through [REDACTED], the Claimant participated in speech therapy due to aphasia and dysarthria. The Claimant's auditory comprehension was impaired for longer sentences, paragraphs, and multiparty conversations as was her reading comprehension. The Claimant intelligibility of connected speech was moderately impaired with voice quality ranging from normal to moderately breathy with fatigue. The Claimant met, however, 5/5 of her primary long-term goals.

On [REDACTED], an MRI and MRA of the Claimant's brain were performed. The MRI found maturing/evolving pontine hematoma likely secondary cavernoma, associated right hypertrophic olivary degeneration, right frontal developmental venous anomaly, and multifocal signal alterations in the perventricular and frontoparietal white matter (nonspecific and stable).

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. The Claimant's impairment(s) or the effects thereof, have not lasted continuously for twelve months, (although the receipt of treatment will likely continue beyond the 12 month period) however, in light of the *de minimis* standard the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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.

Listing 11.00 discusses adult neurological disorders. Persistent disorganization of motor function in the form of paresis or paralysis, tremor, or other involuntary movements, ataxia, and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singling or in various combinations, often support a finding of a neurological impairment. 11.00C The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms.

Listing 11.04 discusses central nervous system vascular accidents. To meet this listing and individual must establish one of the following more than 3 months post-vascular accident:

- A. Sensory or motor aphasia resulting in ineffective speech or communication; or
- B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station.

In this case, the Claimant suffered a brain hemorrhage in October 2009. In January 2010, more than 3 months after the stroke, the Claimant's prognosis remained guarded and she was restricted to sitting/walking/standing 0-2 hours; unable to lift/carry any weight; unable to perform fingering and grasping with her upper left extremity; continued to experience sensory loss, muscle weakness, and reduced range of motion. In addition, the Claimant's speech was still impaired. The Claimant's primary care physician found the Claimant unable to work and total disabled and would possible have a lifetime of symptoms and limitations. In consideration of the objective medical records, it is found that the Claimant meets, or is the equivalent thereof, a

Listed impairment within 11.00, specifically 11.04, thus she is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the November 9, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in May 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 4/2/2010

Date Mailed: 4/2/2010

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 the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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