

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: 2010-20758

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 31, 2010

Mason 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 March 31, 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 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 January 12, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 3, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 10, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On February 19, 2010 claimant filed a request for a hearing to contest the department's negative action.

(5) On March 9, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating she was capable of performing other work, namely unskilled work per 20 CFR 416.968(a).

(6) Claimant provided additional medical information following the hearing which was forwarded to SHRT for review. On May 21, 2010 SHRT once again determined that the claimant was capable of medium unskilled work per Vocational Rule 203.28, and therefore not disabled.

(7) Claimant is a 44 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs about 110 lbs. after losing 25 lbs. due to pain, depression, nerves and irritable bowel syndrome according to her hearing testimony.

(8) Claimant completed 12th grade and can read, write and do basic math. Claimant last worked on January 7, 2010 in assisted living home for the elderly as resident care specialist doing paperwork resident care personal needs, etc., job she held for 4 years. Claimant testified her back gave out and her doctor took her off work so she resigned. Claimant also held jobs in private care and nursing homes.

(9) Claimant current lives alone in a house, gets food stamps, and receives some financial help from her family. Claimant has a driver's license, drives to the grocery store, cooks a little and does little housework.

(10) Claimant alleges as disabling impairments: back and neck pain and severe depression.

(11) Claimant has applied for Social Security disability and her claim is pending.

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).

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 (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 January 7, 2010. 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 a May, 2008 hospital report stating that the claimant fell down the stairs and injured her low back and tailbone. MRI of claimant's lumbar spine revealed no fractures or defects.

Claimant had a series of MRI's done on May 12, 2009. MRI of her lumbar spine showed mild diffuse disc bulging at the T12-L1 level, mild degenerative changes at L4-5, but no

significant central spinal canal or neuroforaminal stenosis was noted, or focal disc herniation visualized. MRI of claimant's cervical spine revealed a small disc herniation at C5-C6 and mild thecal sac effacement at C3-C4, C5-C6, and C6-C7, with no significant central spinal canal or neuroforaminal stenosis. MRI of claimant's thoracic spine revealed mild diffuse disc bulging at T10-T11, T11-T12, and at T12-L1, with mild associated thecal sac effacement, without evidence of spinal cord effacement and without evidence of central spinal canal stenosis. MRI of claimant's right knee showed small joint effusion.

Medical Examination Report of January 18, 2010 states as claimant's diagnoses multi level herniated discs, GERD and depression. Claimant's doctor, a family practitioner, states on this form that she is unable to lift anything, and that she cannot use her hands/arms and feet/legs for any type of repetitive action. Claimant is therefore described practically as a total invalid by her doctor on this form. Same doctor completed a January 8, 2010 note stating that the claimant cannot work in any capacity effective on that date.

March 5, 2010 an MRI of claimant's C-spine report states that the previous study did describe a small disc herniation at C5-C6, which has resolved. Mild degenerative disc disease is present at C5-C6 and C6-C7 without any significant central canal stenosis or neural foraminal narrowing. MRI of claimant's thoracic spine report states that the vertebral bodies do have preserved heights and alignment, the thoracic spinal cord signal is unremarkable, and from T1 through T10 no significant disc pathology is present.

Claimant was referred to a specialist by her treating physician and was seen by him on April 12, 2010. Specialist states that the examination shows a 43 year old female in no acute distress. Claimant's neck is supple, there is good range of motion and there is no spasm or tenderness. Examination of the thoracic and lumbar region is normal. Claimant has normal

range of motion of the lumbar spine. Straight leg raising is negative bilaterally and peripheral pulses are 2+ and symmetrical. Neurological examination shows the claimant to be awake, alert and oriented with good mentation. Motor strength testing demonstrates no evidence of weakness, atrophy or fasciculation. Motor tone is normal throughout and there is no tremor. Sensory examination is normal to pinprick and position sense. Reflex testing demonstrates 2+ and symmetrical deep tendon reflexes. There are no pathologic reflexes noted. Cerebellar and gait testing is normal. MRI scanning is reviewed. The findings of both the cervical thoracic and lumbar spine MRI scanning shows no significant abnormality in specialist's opinion. There is certainly no surgically correctable problem. Specialist concludes that he would not recommend any specific surgical intervention and he has nothing to offer the claimant.

Medical Examination Report of May 7, 2010 and questionnaire by claimant's family doctor once again describes the claimant as a practical invalid, in direct contradiction to the above-cited specialist report from a specialist this same doctor referred the claimant to.

Claimant was admitted to [REDACTED] on a voluntary basis for evaluation and treatment of depression with suicidal ideation on [REDACTED], after she was brought to the emergency room by a [REDACTED] with a plan to overdose on medication. Claimant stated she had "nothing to live for" and the key driver to her depression being her denial of Social Services. Claimant also stated her primary care provider had recently put her off work and being denied by the department in addition to her medical problems caused a breakup of a relationship. Mental status exam describes the claimant as tearful and quite angry regarding her perception of lack of support and help for her situation. Claimant was oriented to person, place, time, and situation, her mood was dysphoric and nonreactive, thought process was goal directed and showed no perceptual disturbance. There was active suicidal ideation without

a plan in the structured milieu. There was no homicidal ideation. Memory and cognitive functioning appeared to be grossly intact. Social judgment appeared to be adequate and insight poor.

Physical examination was normal except that the claimant appeared to be in some distress from pain. Neurologically claimant's gait was unremarkable, and her reflexes and muscle strength equal and symmetrical. No peripheral edema was noted.

Claimant was diagnosed with depressive disorder not otherwise specified fueled by personal stress and chronic pain, and a GAF of 30.

February 23, 2010 Service Entry Initial Assessment by Community Mental Health System was done as part of claimant's discharge planning from the hospital. Claimant stated that she does not feel she is mentally ill, just angry that she cannot get any help from DHS, and that her issues are not mental health issues, but more of a financial issue. Claimant was alert and oriented to person, place, time and situation, and sat comfortably in her chair. Claimant's mood was mildly anxious, but improved, affect was calm, and her thought process as coherent and goal directed. Diagnostic summary narrative states that the claimant does not appear to present with a severe and persistent mental illness, and also does not appear to meet criteria based on her level of functioning. Claimant agrees that her biggest stressor is not being able to obtain assistance through DHS, this has made her very angry, and she does not know what else she can do to prove to them that her physical pain is legit. Outpatient therapy was recommended.

March 1, 2010 notes from claimant's therapist quote her as saying she is bitter about separation from "Jeff", apparently her fiancé, as he had moved out of her home in October, 2009 and left her with credit card debt. Claimant is also complaining about her physical issues and

stating she cannot work due to those issues. April, 2010 notes describe claimant's anger with lack of assistance from DHS.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant fell down the stairs in 2008 and injured her tail bone. Claimant continued to work in assisted living home for the elderly as resident care specialist until January 7, 2010, at which time her treating physician suddenly concludes that she is unable to work. This physician has completed a report stating that the claimant cannot do anything and presenting her as a practical invalid, as already stated in this decision. However, MRI's from 2009 and 2010 do not show that the claimant has any major issues that would support her claim of constant, unbearable pain, 20 on a scale of 1-10 she cited in the hearing. Furthermore, claimant was referred to a specialist by her own physician and this specialist concluded that the claimant does not have any significant deficits, either as shown on MRI's or by the physical exam he performed. 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. Claimant was hospitalized in February, 2010 because she stated she may commit suicide by taking an overdose of medication. Hospital reports quote the claimant as saying she is not mentally ill but angry about her financial situation and lack of help from DHS. Claimant's therapist also quotes her as being very upset about the break up of her long term relationship. Claimant was evaluated as not having any serious mental illness but suffering from stress due to her financial situation and claimed medical issues. 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. 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 as a resident care specialist, job she held until January, 2010. Medical information provided does not support a conclusion that the claimant could not perform this job again. 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], 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 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 medium 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, light and medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 44 years of age), with high school education and an unskilled work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

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 and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary, light and medium work 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: November 17, 2010

Date Mailed: November 17, 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.

2010-20758/IR

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