

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: 2010-2719
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Arenac County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on November 18, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and 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 April 30, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 25, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 25, 2009 the department caseworker sent claimant notice that her application was denied.

(4) On June 25, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 27, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that she was capable of performing other work, namely light unskilled work per 20 CFR 416.967(b), 20 CFR 416.968(a), and Vocational rule 202.21.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On December 10, 2009 SHRT once again determined that the claimant was not disabled, as she was capable of light unskilled work.

(7) Claimant is a 45 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 220 lbs., claiming she gained 40 lbs. due to inability to exercise. Claimant completed high school and 2 years of college in basic law classes, and can read, write and do basic math.

(8) Claimant states that she last worked in year 2005 in retail clothing store for 3 months, job she was fired from due to shoulder problems. Claimant also worked for an eye glass company from 1997 to 2001 selling glasses, job she quit due to stress in her personal life.

(9) Claimant currently lives alone in an apartment that is government-subsidized and her rent of \$50 per month is being paid by her boyfriend. Claimant also receives food stamps.

(10) Claimant has a driver's license and drives 2-3 times per week to doctor appointments, fixes simple meals, but cannot grocery shops and her boyfriend does it. Claimant watches TV, plays with her cat and visits with neighbors on occasion as hobbies.

(11) Claimant alleges as disabling impairments right shoulder injury, bursitis in left hip, degenerative disc disease and bulging disc in her neck, mood and sleep disorder, migraines, allergies, anemia, arthritis, retaining water for unknown reasons, depression, anxiety and panic attacks.

(12) Claimant has applied for Social Security disability and her claim was pending at the time of the hearing.

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 1, 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 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)). 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 year 2005. 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 October 30, 2007 x-ray of claimant's left hip for complaint of pain. Finding was that of negative examination of the pelvis and left hip, and no abnormality of the right hip was found.

X-ray of claimant's right shoulder due to chronic pain dated February 19, 2008 was negative, as the bones, joint spaces and surrounding soft tissues were radiographically normal.

MRI of claimant's right shoulder dated March 31, 2008 revealed mild degenerative changes involving the right acromioclavicular (collar bone) joint, a small area of partial bursal surface tear, and possible labral tear.

February 9, 2009 MRI of claimant's cervical spine due to complaints of pain and tingling in right arm revealed mild degenerative disc disease and disc bulging at C4-C5 without focal disc herniation or spinal stenosis, and mild degenerative foraminal narrowing bilaterally at C4-C5 and on the left at C6-C7.

Medical Examination Report for an exam of February 16, 2009 states that the claimant was 212 lbs., and that her examination areas were normal except for issues with her neck, back, left hip and right shoulder. Claimant's condition was stable but she could not lift/carry any amount of weight, could not stand, walk or sit at all, did not need assistive devices for ambulation, but could only use her left hand/arm for repetitive actions. Findings were based on the abnormal MRI of the right shoulder and cervical spine and due to claimant having surgery on her shoulder.

March 3, 2009 Progress Note indicates claimant complained of continued and exacerbating right shoulder pain in the shoulder area that was resected. X-rays reveal a nice resection with good stability of the joint, and claimant had good range of motion and strength, but pain upon elevation. May 4, 2009 Progress Note indicates that the claimant still has pain in

between 2004-05) and officiating the game when she is not a participant. (page 47). Health related concerns include low thyroid, pain in neck/shoulder, and gall bladder surgery in August, 2007. Claimant stated she has a sharp and non stop aching pain in her right shoulder from a past injury. After assessing claimant's skills, it was determined that she is functionally independent in all areas of daily living, self-care, socialization, and communication. Claimant can benefit from outpatient individual therapy, she will continue to follow up with medication therapy and physical issues with her primary physician. Claimant was diagnosed with major depression disorder, recurrent moderate, and anxiety disorder. No suicidal or homicidal ideation was noted, claimant is intelligent, and her thoughts were logical and her judgment as well. Claimant had normal rate and volume of speech, her immediate and recent memory was intact, she had good decision-making ability, but stated her concentration is poor at the time.

Psychiatric Progress Note/Medication Review of May 20, 2009 indicates that the claimant's status is stable and improving, and even though it has only been 3 weeks since her medication was switched from [REDACTED] she states she is already feeling noticeably better, happier and no longer depressed. Claimant reported spending most of her time watching her 3 month old grandson.

Claimant cancelled her [REDACTED] appointments. Claimant walked into [REDACTED] without a scheduled appointment, very distraught and crying, and wanted to see a therapist. Claimant then reported that she was upset about her son not allowing her to see her one year old grandson. After talking to the therapist claimant was feeling better and was to have her next contact on October 1, 2009.

November 18, 2009 psychiatric progress note/medication review indicates that the claimant's status is improving, and that her treatment regimen is to be continued unchanged.

Claimant had no side effects from her medications, was alert, had adequate attention span, normal motor activity, and spontaneous speech.

Claimant was seen for consultation on March 12, 2009 regarding her chronic neck pain radiating down the shoulder all the way down to the fingers with numbness and tingling.

Claimant reported this pain is constant with tightness and spasm of the shoulder muscles and numbness of the fingers. Claimant had not had physical therapy in the past. Pain is increased by driving, watching TV, fixing her neck in one position, or with any neck movement. Pain is decreased with medication. Upon examination claimant had tender facet joints of the cervical spine bilaterally, and mild to moderate limitation of range of motion in all directions.

Neurologically, claimant's cranial nerves were grossly intact, she had no sensorimotor deficits, and deep tendon reflexes were 2 plus at the biceps and triceps muscles. There was a slight difference between the right and left hand grip with some weakness over the right side.

Assessment was that of cervical radiculopathy associated with cervical facet arthropathy.

Claimant was to be scheduled for cervical epidural steroid injections, was taking Neurontin and Elavil, and was to be scheduled for physical therapy once her pain is under control.

Claimant had cervical epidural injections on March 24, 2009, April 7, 2009, and April 21, 2009. Progress Note of May 22, 2009 quotes the claimant as saying that the injections helped her pain to a good extent, and that she is not having the intense spasm anymore. Claimant stated her pain was a 7 out of 10 on the visual analog scale, she is maintained on Neurontin and Elavil, as well as Celebrex, and denied any side effects to her medications. Upon examination, there is much improvement in the claimant's neck pain, range of motion and flexibility. Assessment is that of cervical radiculopathy responding to cervical epidural steroid injections. Claimant will be sent to physical therapy for six weeks.

July 17, 2009 Progress Note states that the claimant was in for re-evaluation after receiving a series of three epidural steroid injections. Claimant stated that the injections helped her neck pain for a while, but then the pain started to come back again, and that she also has some shoulder pain as well. Claimant was in no acute distress and was alert and oriented x3. There was minimal pain on examination of the cervical spine and shoulders. Assessment was that of cervical radiculopathy responding to epidural steroid injections. Plan of management is for the claimant to continue with her current medication, and to continue with physical therapy at home.

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. Analysis therefore continues to Step 3.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. 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 would have to deny the claimant based upon her ability to perform past relevant work. Claimant's past relevant work was working in a store selling glasses and in a retail clothing store. While the claimant does have neck and shoulder issues, her treatments were helping her pain, and she was also taking her medications without any side effects. Claimant's psychological issues also improved with medication. It would therefore appear that the claimant could perform her past work as long as they do not involve

heavy lifting or repeated overhead reaching. It is also noted that while the claimant's medical doctor stated that she could practically do nothing as far as lifting, sitting, walking, etc., and that she needed assistance in household duties such as dishwashing even, claimant reported to the therapist that she was totally independent in all activities of daily living and that she even played volleyball on occasion. As it is unlikely that the claimant would misrepresent her physical condition to the therapist, the assessment of claimant's physical limitations by the claimant's doctor appears to be somewhat exaggerated. 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 sedentary 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 and light work. Under the Medical-Vocational guidelines, a individual

younger individual age 45-49 (claimant is 45), with high school education or more (claimant has 2 years of college) and an skilled or semiskilled work history with skills that are not transferable to other jobs who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.21.

In conclusion, 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, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary and light 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: August 4, 2010

Date Mailed: August 5, 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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