

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 2010-31969
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: May 19, 2010
Lake 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 May 19, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her husband [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

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 5, 2010, claimant filed an application for Medical Assistance benefits alleging disability.
- (2) On April 19, 2010, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.
- (3) On April 20, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On April 15, 2010, claimant filed a request for a hearing to contest the department's negative action, based on an April 13, 2010 notice sent to her by the department denying cash application due to excess income and Adult Medical Program application as the program was closed to new enrollments at the time.
- (5) On April 30, 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 June 10, 2010 SHRT once again denied claimant's application stating that she retains the capacity to perform a wide range of simple, unskilled work, and using Vocational Rule 204.00(H) as a guide.
- (7) Claimant is a 45 year old woman whose birthday is January 3, 1965. Claimant is 5'4" tall and weighs 218 pounds after gaining 60 pounds in the last year as she quit cocaine use. Claimant completed 12th grade, has a [REDACTED] certificate, and can read, write and do basic math.
- (8) Claimant states that she last worked in 2009 as a home help provider for a disabled person through the State of Michigan, job that lasted her 2 months and that ended because she did not show up for work due to depression. Claimant has also worked in restaurants and nursing homes in [REDACTED], and has been a prison guard in that state.
- (9) Claimant lives with her husband, has a driver's license but no car, and does some cooking, cleaning and grocery shopping. Claimant smokes, does not drink, and testified that she quit using crack cocaine a year ago.
- (10) Claimant alleges as disabling impairments: bipolar, manic depressive and personality disorder, suicidal thoughts, high blood pressure, hypoglycemia, tail bone that has no cartridge in it and muscle pain from past car accidents, and frequent headaches.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

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

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

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not

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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).

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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 2009. 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 [REDACTED] [REDACTED] Initial Assessment quoting the claimant as saying she just moved to Michigan, is bipolar and needs her medication. Claimant stated she has been treated with outpatient mental health services since she was eleven years old, and that her episodes of depression can last several weeks to a few months, while manic episodes usually last several days to a week. Claimant did not report any hallucinations, delusions or paranoia during these episodes. Claimant has historically treated episodes of depression with illicit drug use and stated that she feels she has an addiction and would like to participate in a co-occurring treatment program. Reportedly, illicit drug use increases dramatically when she is unable to afford psychotropic medications. Claimant stated that she does not have a history of suicidal ideation, plans or attempts.

Mental status exam showed the claimant as alert and oriented to person, place, time and situation. Claimant's clothing was clean and she presented with good hygiene. She presents in an outgoing manner, appeared relaxed and did not present with any odd mannerisms or unusual behaviors. Claimant's speech was generated at an appropriate rate, rhythm and volume, and her conversation was logical and goal directed. Thought processes and content were unremarkable, and there were no reports or observable evidence of paranoia, delusions or sensory hallucinations.

Claimant reported never being placed in an inpatient psychiatric hospital or a residential facility. Claimant was not using any prescription medication, over the counter drugs, vitamins or herbal remedies at that time. Claimant reported a long history of substance abuse, cocaine being her drug of choice, but stated she had not used this drug in a few months. Claimant had never participated in inpatient or outpatient substance abuse treatment. Claimant was diagnosed with bipolar disorder, cocaine dependence with physiological dependence, amphetamine abuse, and a GAF of 45. It was noted that the claimant appears to be aware of mental health concerns as well as substance abuse, and that she is motivated to take steps toward recovery.

CMH psychiatric evaluation of February 17, 2010 quotes the claimant as saying she needs to get treatment for her bipolar disorder so she won't give in to cravings for cocaine to self medicate. Claimant was not on any medications at this time. Mental status examination indicates that the claimant was neat and clean, and well oriented as to person, place, time and situation. Claimant's thoughts were organized and goal directed, and her speech was normal tone, rate and volume. Claimant denied hallucinations, delusions or paranoia, or any homicidal or suicidal ideation. Claimant was to keep appointments with her case manager, was given Gabapentin prescription, and was to see a nurse for a nurse med review in one week and the psychiatrist back again in two to three weeks.

██████ medication review of April 16, 2010 quotes the claimant as saying she has been going to a local clinic and has had no migraines since she was prescribed Neurontin, but wakes up with anxiety attacks and has shortness of breath and heart pounding. No physiological or cardiac reason for this has been found. Claimant weighed 211 ½ lbs. with blood pressure of 146/76. Claimant was alert, cooperative, oriented, and adequately dressed and groomed. Her speech was clear and of normal pattern, and content revealed no psychotic symptoms. There was no homicidal or suicidal ideation, no euphoria or despair. Claimant appeared to be anxious with some blunting of affect. Claimant's diagnosis was that of bipolar affective disorder which appeared to be in remission except for some anxiety, panic disorder without agoraphobia which appears to be actually presenting more symptoms at the time than the bipolar disorder, and a GAF of 50. Claimant was continued on Trazodone and Gabapentin and given an antidepressant also.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant presented herself in the hearing as being depressed all the time, very emotional, stressed out, not liking to be around other people, having suicidal thoughts and overdosing several times. Claimant's medical record however quotes her as saying she had overdosed twice in her life by accident while using illegal drugs and/or prescription medications due to her addiction to both. While the claimant has been diagnosed with bipolar disorder and anxiety, her mental status examinations do not reveal any serious impact on her general mental state. Claimant testified she is no longer abusing any illegal substances. Claimant has been receiving needed medications from [REDACTED], absence of which she claims resulted in cocaine abuse in the past. Claimant did cite problems with headaches, high blood pressure, hypoglycemia and her tail bone in the hearing, but has provided no medical information to support any type of limitations from these alleged ailments. 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 in restaurants and nursing homes, and also as a home health provided. 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]... 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 light, sedentary and medium work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 45), with high school education and an unskilled or no work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.06.

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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.

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 light, sedentary 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: October 25, 2010

Date Mailed: October 25, 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.

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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.

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