

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

IN THE MATTER OF:



Reg. No.: 2010-33905
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 17, 2010
DHS County: Macomb (50-20)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on June 17, 2010. Claimant appeared and testified.

The record was extended to allow Claimant's representative time to submit medical records from Claimant's treating family doctor and forms DHS-49, DHS-49D and DHS-49E from Claimant's treating psychiatric provider. Claimant's representative was given extensions and on September 15, 2010, the representative submitted office records from Claimant's treating family doctor and notes and therapist evaluation of Claimant's psychiatric condition not cosigned or signed by a doctor. The representative also failed to submit forms DHS-49D and DHS-49E. The records received were reviewed and considered in this decision.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

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

1. On October 7, 2009, Claimant applied for MA-P, SDA and retro MA-P.
2. On March 26, 2010, the Medical Review Team denied Claimant's request.
3. On April 23, 2010, Claimant submitted to the Department a request for hearing.

4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 41 years old.
6. Claimant completed education through high school and is also licensed as a phlebotomist, CAN and first responder.
7. Claimant has employment experience as a waitress, nursing aide and cashier.
8. Claimant's BMI, according to a doctor visit on [REDACTED], was 44.1 based upon a height of 5'5 and a weight listed on that date of 265 lbs.
9. Claimant suffers from hypothyroidism, asthma, diverticulitis, and a chronic hernia.
10. On [REDACTED] Claimant was admitted to a hospital. Claimant was discharged on [REDACTED], with the following diagnosis:
 1. Incarcerated recurrent incisional hernia.
 2. Intractable abdominal pain.
 3. Small bowel adhesions.
 4. Morbid obesity with body mass index greater than 42.
 5. Hypothyroid.
 6. Tobacco abuse.
 7. Asthma.

Claimant underwent the following procedures:

1. Exploratory laparotomy with lysis of adhesions.
 2. Foreign body removal of previous mesh.
 3. Ventral hernia repair with Gore-Tex underlay and Prolene overlay.
 4. Myocutaneous flap.
11. On [REDACTED], Claimant underwent a CT scan of the abdomen and CT scan of the pelvis with intravenous contrast with the following conclusions:
 1. Ventral hernia containing a loop of transverse colon and small bowel. There is no evidence of obstruction.
 2. Diverticulosis of colon.
12. On [REDACTED], claimant had a negative portable chest x-ray.
13. On [REDACTED], Claimant went to the emergency room complaining of left side chest pain. She indicated she rarely uses her rescue inhaler and stated she had never been hospitalized or intubated for asthma. Impressions indicated by emergency room records were as follows:

1. Atypical chest pain, probable musculoskeletal in etiology. Rule out cardiac ischemia. The patient does have cardiovascular risk factors and a strong family history.
 2. Asthma.
 3. Obesity.
 4. Tobacco use.
 5. Hypothyroidism.
 6. Anxiety.
14. On [REDACTED], Claimant underwent a Stress Myocardial Perfusion Examination-Treadmill Stress. Impression as follows:
1. Normal stress myocardial perfusion examination. No evidence of stress induced myocardial ischemia.
 2. Normal left ventricular systolic function.
15. On [REDACTED], Claimant's therapist indicated that Claimant had a GAF of 54 and a diagnosis of post-traumatic stress disorder, chronic.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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 symptoms,

diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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 Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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; 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.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(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, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then 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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with hypothyroidism, asthma, diverticulitis, and a chronic hernia. Claimant's representative provided copies of hospital records and treating physician office notes for consideration as noted in the Findings of Fact.

This Administrative Law Judge found that the testimony given by Claimant was not supported by the evidence. She testified to the following: chronic abdominal pain, can't stand straight or lay flat due to loss of bladder control, has constant loose stool or constipation, short-term memory problems, anxiety, always tired, trouble sleeping due to anxiety, can stand 10 minutes but not fully straight, can sit an hour, can walk a few feet without a walker, has edema in hands occasionally, can lift a gallon of milk, needs help with laundry, she is able to cook, she is able to do dishes, she is able to dust but not able to vacuum, able to drive, needs help with grocery shopping, has anxiety attacks 4-

5 times a month, she has two inhalers and uses them daily, daily shortness of breath, can't go up and down stairs and lost 80 lbs in the last year since February 2009.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was as a waitress, nursing aide and cashier. This required Claimant to be on her feet a good portion of the day and lift weight in excess of 20 lbs. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

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 Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted

may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at no more than a sedentary level after considering Claimant's medical conditions and the added burden of a BMI of 44.

Claimant is an individual of younger age. 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant's previous work was both skilled and unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 201.27, Claimant is not disabled for purposes of MA-P.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHeld.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 2, 2011

Date Mailed: February 7, 2011

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.

JWO/pf

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