

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

IN THE MATTER:



Reg No. 201036478
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: June 24, 2010
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a hearing was held on June 24, 2010.

ISSUE

Did the department properly determine that Claimant did not meet the disability standard for Medical Assistance based on disability (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 a material fact:

1. On December 9, 2009, Claimant applied for MA-P, retro MA-P, and SDA benefits.
2. On April 22, 2010, the Medical Review Team (MRT) denied Claimant's request for MA-P and SDA benefits.
3. On May 20, 2010, the department notified Claimant in writing that she was denied MA-P and SDA benefits.
4. The department received Claimant's timely hearing request, protesting the denial of MA-P and SDA benefits on May 18, 2010,

after she was informed, verbally, by a Department caseworker that her application had been denied.

5. The State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits.
6. Claimant applied for disability benefits based on having “breathing problems.”
7. Claimant was seen for a medical evaluation on March 20, 2010, after complaining of breathing problems. (Department Exhibit 1, pg 27)
8. The results of Claimant’s medical evaluation on March 20, 2010, revealed the following: Claimant has a history of smoking a pack of cigarettes , daily, for 22 years, but reported that she has diminished her smoking to about one to two cigarettes, daily; Claimant’s gait was normal; Claimant was 5’5” and 120 lbs; Claimant had extensive burn scars over the medial aspect of her upper arms, face, and medial aspect of her legs proximal to her knees; the examination of Claimant’s eyes, neck, heart, and abdomen was normal. Claimant’s musculoskeletal exam was normal; Claimant’s chest exam revealed mild to moderately diminished breath sounds and mild prolonged expiratory phase, otherwise, there were normal findings; and Claimant’s CT revealed a metallic foreign body with the right posterior hemithorax. (Department Exhibit 1, pgs 17, 18 & 24-27)
9. On March 20, 2010, the qualified medical source who examined Claimant recommended that she stop smoking.
10. Claimant is a 43-year-old female with a high school education and unskilled work experience as a nurse’s aide.
11. Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

“Disability” is:

...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

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Since claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is

during the time you say that you are disabled. 20 CFR 416.912(c).

...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).

The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) Symptoms are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies

(electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant applied for disability benefits based on having "breathing problems." However, Claimant failed to establish an impairment that would significantly affect her ability to work. The results of Claimant's medical evaluation on March 20, 2010, revealed the following: Claimant has a history of smoking a pack of cigarettes , daily, for 22 years, and it was recommended that she stop smoking; Claimant's gait was normal; Claimant was 5'5" and 120 lbs; Claimant had extensive burn scars over the medial aspect of her upper arms, face, and medial aspect of her legs proximal to her knees; the examination of Claimant's eyes, neck, heart, and abdomen was normal; Claimant's musculoskeletal exam was normal; Claimant's chest exam revealed only mild to moderately diminished breath sounds and mild prolonged expiratory phase, otherwise, there were

normal findings; and Claimant's CT revealed a metallic foreign body with the right posterior hemithorax. Based on the medical evidence on the record, it is likely that Claimant's mild breathing problem will improve if she complies with her medical doctor's recommendation and stops smoking. There's no objective medical evidence that this metallic foreign body, which the CT revealed, significantly affects Claimant's ability to engage in basic work activities.

Even if the analysis continued, Claimant failed to establish that she has a severe impairment which meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1. Further, there is no objective medical evidence on the record to establish that Claimant is unable to do any of her past relevant unskilled work. Claimant testified that she last worked in 1996 as a nurse's aide and stopped working after being fired from her job. Claimant did not have an explanation for not getting another job after being fired from her last job.

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).

Even if the analysis continued to the last step of the sequential evaluation, this Administrative Law Judge would find that Claimant's mild breathing problems would not prevent her from doing at least sedentary and light work. Based on the objective medical evidence on the record, Claimant does not have any problems with her bilateral upper and lower extremities that would prevent her from doing at least light work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is a young individual with a high school education and unskilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rule 201.27 as a guideline, claimant would be considered not disabled. According to this Medical Vocational Rule, a young individual under the age of 45, with a high school education and unskilled work experience, limited to sedentary work, is not disabled. Using Medical Vocational Rule 202.20 as a guideline, claimant would be considered not disabled. According to this

Medical Vocational Rule, a young individual under the age of 50, with a high school education and unskilled work experience, limited to light work, is not disabled.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the department's MA-P and SDA decision is upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined that Claimant did not meet the MA-P and SDA disability standard.

Accordingly, the department's MA-P and SDA decision is affirmed.

/s/
Marya A. Nelson-Davis
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: October 1, 2010

Date Mailed: October 4, 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.

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