

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-36496
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 29, 2010
Kent 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 June 29, 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 retro MA?

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 December 17, 2009, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.

(2) On January 22, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On January 27, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On March 18, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 9, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating that she was capable of performing her past work as a Youth Treatment Specialist.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On July 13, 2010 SHRT determined that the newly submitted evidence does not significantly or materially alter the previous recommended decision.

(7) Claimant is a 58 year old woman whose birthday is December 5, 1951. Claimant is 5'5" tall and weighs 265 lbs. after gaining 5 lbs. due to medications. Claimant has an associate degree in social work and can read, write and do basic math.

(8) Claimant states that she last worked in 2005 for [REDACTED] assisting with adult care for 2 ½ years, until she was in a car accident. Claimant was also a Youth Treatment Specialist at a children's treatment center for 9 years from 1991 to 1997 until she was in a car accident and had a post concussion syndrome.

(9) Claimant receives long term disability payments which will stop at age 65, and lives in an apartment subsidized by Section 8. Claimant has a driver's license, drives to church and doctor appointments, and also takes her mother to different places around town. She cooks, grocery shops, and cleans her home with the help of her grandchildren.

(10) Claimant alleges as disabling impairments: colitis, back pain, neck and back injury from a 2005 car accident, fibromyalgia, high blood pressure, asthma, and high cholesterol, shortness of breath, atrial fibrillation, and headaches.

(11) Claimant has applied for Social Security disability 3 times in the past and been denied at a hearing level several years ago, and currently does not have an application 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).

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 3, 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 4 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 a hospital admission from December, 2009 for acute abdominal pain with nausea. Claimant was discharged after 4 days in stable condition with discharge diagnoses of acute ischemic colitis with associated bloody diarrhea, anemia, which is acute blood loss anemia, hypokalemia, acute renal failure, probably secondary to GI bleed and dehydration, acute chronic back pain, status post motor vehicle accident, hypertension, hypertension urgency, hyperparathyroidism, asthma, fibromyalgia, dyslipidemia and obesity.

Medical Examination Report of December 23, 2009 indicates that the claimant's condition is stable, that she can occasionally carry less than 10 lbs., that due to back pain she cannot reach or push/pull, and that she has no mental limitations. Diffuse abdominal tenderness and back tenderness is noted.

██████████ report of ██████████ states that the claimant has new onset atrial fibrillation in March, 2010. Claimant continued to have palpitations, however, these were much improved. She denied any recurrent chest pain, but does have shortness of breath with moderate exertion. Claimant was alert and oriented times three, and in no acute distress. Weight was 268 lbs., heart rate 74 bpm, and blood pressure 135/86. Breathing was non-labored, lungs were clear to auscultation bilaterally, and there were no crackles, rhonchi or wheezing. Abdomen was soft and non-tender with normal bowel sounds. Musculoskeletal exam was normal. Claimant's heart had irregular rate and rhythm. Final impression is that of persistent atrial fibrillation for which the claimant is on amiodarone therapy as well as Coumadin, chest pain, atypical, and hypertension. Claimant was to continue with her medications.

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. These impairments have lasted for a period of 12 months or more. Claimant has therefore met her burden of proof at Step 2 and analysis continues.

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 finds that the claimant does not have the ability to perform past relevant work. Claimant's past relevant work was working with disabled adults at [REDACTED]. Claimant was also a youth treatment specialist at children treatment center until 1997. Claimant's multitude of physical issues would prevent her from performing physical part of such jobs that is usually required when working with disabled adults or troubled children. Finding that the claimant is unable to perform work which she has engaged in the past can therefore be reached and the claimant is not 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 sufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to perform anything but sedentary work at best. Claimant is of advanced age (58), and while she has an associate degree in social work, her job as a Youth Treatment Specialist ended in 1997 due to a car accident in which she suffered a concussion. Claimant has not worked since 2005 when she was in another car accident. Claimant is receiving long term disability payments from her last employer, another indication that she cannot perform her past work. Claimant would therefore not be disqualified from receiving disability at Step 5 per Vocational Rule 201.04.

The claimant has 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). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is 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 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 improperly denied claimant's MA and retro MA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed December 17, 2009 MA and retro MA application and grant her any such benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).

2. Notify the claimant of this determination.

3. If the claimant meets eligibility requirements, review her case in December, 2011, at which time updated medical information is to be obtained.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 3, 2010


Date Mailed: December 3, 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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