STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:
[redacted]

Reg. No: 2010-39410
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
July 21, 2010
Ingham 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, an in-person hearing was held on July 21, 2010. Claimant personally appeared and testified. Claimant was represented by [redacted].

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 July 31, 2008, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.

(2) On March 16, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 17, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On June 14, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 24, 2010, the State Hearing Review Team (SHRT) also denied claimant's application stating the claimant was capable of performing other work, namely sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.28.

(6) Claimant submitted additional medical information following the hearing hat was forwarded to SHRT for review. On July 22, 2010 SHRT once again determined that the claimant was capable of sedentary work and therefore not disabled.

(7) Claimant is a 26 year old woman whose birthday is [redacted]. Claimant is 5'3" tall and weighs 170 pounds. Claimant completed high school and has taken general college courses for 3 years, and can read, write and do basic math.

(8) Claimant is working at a hotel setting up banquets and cleaning up, on the average of 15-20 hours per week at $2.65 per hour plus gratuity of about $100 to $200 biweekly, for an employer that works around her medical issues. Claimant has also worked in other restaurants.

(9) Claimant lives with a roommate in a house and receives food stamps, has a driver's license and drives somewhat, cooks a little, cleans the house, and goes grocery shopping with a friend.

(10) Claimant alleges as disabling impairments congenital heart issues, tricuspid atresia, atrial flutter, arteriovenous malformation in right lung, and chronic hypoxemia with cyanosis.

(11) Claimant has applied for Social Security disability and been denied, and is appealing the denial.

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 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 does not appear to be engaged in substantial gainful activity as she works 15-20 hours per week at $2.65 per hour and receives gratuity of $100-$200 every two weeks. 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 14, 2008 hospital discharge summary stating that the claimant came to the emergency room on October 13, 2008 complaining of chest palpitations. Claimant has a history of tricuspid atresia, a rare form of congenital heart disease in which there is no communications between the right atrium and the right ventricle, with repair at age 2 and again at 5 years of age, and atrial fibrillation with ablation in [redacted] hospital. Claimant has been followed by physicians at [redacted] hospital and was due to have a cardiac catheterization this year upon recommendation, but did not follow through with these appointments, as she stated she did not feel it was necessary. In the emergency room, she was noted to be in atrial fibrillation with rapid ventricular response with rates as high as 190 beats per minute, and was placed on a Cardizem drip for rate control and heparin drip for anticoagulation. Claimant was discharged with instructions to follow up with [redacted].

October 26, 2009 medical evaluation quotes the claimant as describing her history of congenital tricuspid atresia, stating she is under the care of a local electrophysiologist, and that she is on a beta blocker for tachycardia. Claimant also sees a cardiothoracic surgeon at [redacted] who has suggested she may need to have surgery sometime in the near future. Claimant had cyanotic tinge to her finger nails and lips, and she advises this has been a chronic condition because of the nature of her heart surgeries and her initial congenital defect. Claimant stated she can walk but not run, and does not participate in strenuous physical activity.

[redacted] follow up visit report at the [redacted] at the [redacted] quotes the claimant as saying she was hospitalized 1 month ago for gallstones, but her liver was found to be enlarged, and liver biopsy revealed some sort of fibrotic disease. Claimant diagnoses includes a tricuspid atresia, ventricular septal defect, and normally related great arteries, atrial flutter, chronic hypoxemia with baseline oxygen saturations in the low 80's, right pulmonary arteriovenous formation, and hepatic fibrosis on liver biopsy. Recommendations include a follow up in 3 months with pulmonary function testing in preparation for possible surgery. The examiner is most concerned about the claimant's pulmonary AVM's and chronic hypoxemia, and is hopeful that if hepatic factor was supplied to both lungs, she might have resolution of her unilateral AVM's. She has also had arrhythmias, and it is felt she would benefit from arrhythmia surgery. The procedure is not without risk, and claimant is reluctant to proceed. It is recommended she meet with another doctor to further discuss the surgery.

Claimant was seen again at [redacted]. She feels she has now become more symptomatic with shortness of breath and is exhausted after several hours of work. Claimant also has dizziness when bending over and has had memory difficulties as well. It is recommended that the claimant undergo Fontan conversion procedure, but her lack of insurance is an issue. Claimant should avoid standing for greater than 2 to 3 hours at a time, should be allowed to rest after that period, and should be able to elevate her legs as necessary.

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. Claimant's impairment has lasted 12 months. Claimant therefore meets 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 support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, that of 4.00. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed.

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 July 31, 2008 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. Review claimant's ongoing MA eligibility in December, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

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

Date Signed: December 22, 2010

Date Mailed: December 22, 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

cc: [redacted]