

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: 2010-41305
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 4, 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, a telephone hearing was held on August 4, 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 April 12, 2010, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.
- (2) On June 4, 2010, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work per 20 CFR 416.920(E).
- (3) On June 7, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On June 29, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 9, 2010, the State Hearing Review Team again denied claimant's application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, sedentary work. Vocational Rule 201.27 was used as a guide.
- (6) Claimant is a 40 year old woman whose birthday is [REDACTED]. Claimant is 5'5" tall and weighs 243 lbs. Claimant completed 12 grade and some college computer classes, and can read, write and do basic math.
- (7) Claimant stated that she last worked in July, 2009 as a nanny in a private home for 4 children ages 1 ½, 5, 8 and 13, full time job she held since March, 2008 and for which she was given free room and board. Claimant's job ended when the children's mother was laid off from her job. Claimant has also been a secretary from 1994 to 1999, clerk typist from 1999 to 2003, worked in a book store in 2004, and as a home health aide in 2007.
- (8) Claimant is currently an active client of [REDACTED] and receives State Disability Assistance on this basis. Claimant is living in transitional housing apartment paid for by [REDACTED] and also receives food stamps.
- (9) Claimant has a driver's license but no vehicle, and gets around by a public van. Claimant cooks, goes grocery shopping with a friend and rides on a scooter, does some light housework, and spends her time taking online classes, reading, writing poetry, and job hunting on the computer.
- (10) Claimant alleges as disabling impairments degenerative arthritis, disc disease, lack of cartilage in both knees requiring two knee replacements, and depression.
- (11) Claimant has applied for Social Security disability and been denied, and is appealing this 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 4 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 July, 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 Medical Examination Report of July 16, 2009 visit with a current diagnoses of lower back pain, neck pain, right knee pain, bilateral edema and left knee pain. It is noted that the claimant needs bilateral knee surgery and could be incapacitated for up to 6 months.

MRI of claimant's lumbar spine of June, 2009 indicates no spinal stenosis or herniated nucleus pulposus, but degenerative facet disease at the lower two levels in the lumbar spine. MRI of the right knee showed fluid on both sides of the medial collateral ligament consistent with a sprain. MRI of the cervical spine of April, 2009 showed minimal right paracentral herniation of the C5-C6 intervertebral disc with minimal to mild mass effect on the thecal sac, otherwise negative cervical spine MRI.

August 3, 2009 letter from claimant's treating physician states that the claimant has been diagnosed with cervical degenerative disc disease, lumbar spine herniated disc, right knee synaritis and lymphedema, and that these disabilities impact her activities of daily living.

Psychiatric/Psychological Medical Report completed for Disability Determination Service on January 8, 2010 quotes the claimant as saying she has had back pain since she fell on a [REDACTED] bus in November, 2008, and that she has had chronic neck pain as well since the fall. Claimant also related that she has had knee problems on and off since she was 17 and was diagnosed in the year 2000 with arthritis in both knees and told there is no cartilage left. Claimant also reported depression that started for her around age 30 and that her symptoms are an intermittent down mood since she has lost a place to live. Claimant had to flee from an abusive ex-fiancé in October, 2008 from

██████ to ██████ and fears she will be killed if she returns. Claimant also stated that she does have suicide ideas sometimes but is deterred from any attempts since she had to stay overnight in the psychiatric hospital in 2005 after a suicide attempt. Claimant has had no formal outpatient mental health therapy and is not meeting with a domestic violence counselor.

Claimant was 35 minutes late for her appointment, dressed in a casual neat manner, and showed normal posture and gait without pain behaviors. She had cooperative behavior and her stream of mental activity was spontaneous, logical and organized with normal speech. No hallucinations, delusions, or related thought pathology was observed, reported or suspected. Claimant was oriented to time, person, place, and purpose. Evaluation reveals retained abilities to understand, remember, and carry out instructions with some inefficiency for processing new information involving more sustained attention and concentration. Claimant's diagnosis is that of depression NOS moderate and intermittent possible subclinical PTSD. No personality disorder was detected.

Medical evaluation of January 11, 2010 indicates as claimant's chief complaints back, neck, knee and arthritis. Claimant's pain syndrome started after she fell on a transit bus in November, 2008, that she has pain at the right knee and in the cervical and LS spine, and that her right knee is causing her intense pain due to no cartilage. Claimant was 17 years old when she was diagnosed with lymphoedema, fluid accumulation, of the right leg, and her leg started getting more edematous after 25 year old but this did not bother her until her fall on the transit bus in November, 2008. She has never worn a compression hose on the right leg but was recently given a script for a hose.

Claimant ambulated with no assist device. She had edema of the right calf and right knee with the circumference of the right calf being 48 cm. and the left calf 41 cm., while the right thigh was 66 cm. and the left thigh was 65 ½ cm. Claimant was able to lift the 2 lbs. and 5 lbs. overhead in each hand from waist level while sitting on the table. Claimant had no atrophy, no muscle spasm, and her grip was 5/5/ bilaterally. Sensory was intact to touch. Deep tendon reflexes were equal with no signs of clonus. Claimant was reluctant to range of motion but was able to forward flex 60-70 degrees to get her bag of medicine from the ground when the doctor placed it in front of her. Her gait was limping on the right leg but there were no signs of toe drag in swing. Straight leg raising was negative bilaterally in the seated position for sciatica but she complained of pain at her knees, especially the right knee. Claimant walked slowly and carefully in the parking lot and crossed the icy street without losing her balance. Conclusion was that of chronic pain claimant rates as an 8-10/10, and chronic lymphoedema of the right lower calf. Claimant likely has the ability to do all the orthopedic maneuvers with the upper limbs without assistance or modification, and is able to stand and sit but is reluctant to do these maneuvers on a continual basis due to the pain at the right knee.

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. The impairment has lasted 12 months. 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, if claimant had not already been denied at Step 2, the Administrative Law Judge determines that the claimant would most likely be capable of past relevant work. Claimant was a nanny from March, 2008 to July, 2009, taking care of a 1 ½ year old and a 5 year old, despite issues she has had with her neck from the [REDACTED] fall on the [REDACTED] bus and with her knee condition she has had since she was 17 years of age. In addition, claimant held sedentary jobs such as clerk typist and secretary for several years and is currently using her home computer on a daily basis taking online college classes and job hunting. Claimant testified that her chronic knee pain prevents her from sitting too long but did state that her pain medication does bring the pain down to about 4 on a scale of 1-10. Claimant also claims depression from an abusive past relationship, but her psychological exam does not show any serious issues that would prevent her from performing her past relevant work. Claimant could therefore be denied MA 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 sedentary 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 sedentary work, and that is giving her stated impairments great weight. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 40), with high school education and an unskilled or even no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

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 ability to do basic work activities. 20 CFR 416.920(c). However, 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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of sedentary work at least 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: December 7, 2010

Date Mailed: December 8, 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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