

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-41422
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 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 August 5, 2010. Claimant personally appeared and testified along with her husband [REDACTED]. 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 February 10, 2010, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.

(2) On March 23, 2010, the Medical Review Team denied claimant's application stating that her impairment(s) lack duration of 12 months per 20 CFR 416.909.

(3) On March 26, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On June 23, 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 (SHRT) also denied claimant's application due to insufficient evidence. SHRT requested a complete independent physical consultative examination by an internist and a pulmonary function study be obtained by the department.

(6) Additional information was obtained and forwarded to SHRT for additional review. On September 25, 2010 SHRT determined that the claimant retains the capacity to perform a wide range of light work and denied her application using Vocational Rule 201.21 as a guide.

(7) Claimant is a 52 year old woman whose birthday is June 15, 1958. Claimant is 5' tall and weighs 136 pounds. Claimant completed 10th grade and has no GED, but can read and write and do some basic math.

(8) Claimant states that she has not worked most of her adult life and has been a housewife and a mother. Claimant currently lives with her husband and daughter in a house, has a driver's license and drives, cooks daily, grocery shops with her husband, does the laundry, vacuuming, bathroom cleaning, mopping and dusting, but no outside work.

(9) Claimant alleges as disabling impairments: lung functioning, asthma, heart problems, hypertension, and arthritis.

(10) Claimant has applied for Social Security disability and been denied due to her husband's income.

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 one, 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 two, 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 three, 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 is not engaged in substantial gainful activity and testified that she has not worked in many years. 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 discharge summary of November, 2009. Claimant was admitted to the hospital on November 17, 2009 with diagnoses of community acquired pneumonia, diabetes mellitus type 2, hypertension and hyperlipidemia. Claimant presented to the emergency department with a chief complaint of labored, difficult breathing that started the night before. Claimant described this condition as severe and worsened with exertion, walking, and when lying down. Claimant was seen on November 10, 2009 with similar complaints, was treated for bronchitis, was feeling better and discharged home from the emergency department. Claimant did state that she has had mold in her basement due to water runoff into her basement for the past year, and that she had a sinus infection in February, 2009. Claimant was seen at that time by a cardiologist as she had an abnormal EKG, but a Cardiolute stress test performed on her was essentially negative. Diagnoses on discharge was dyspnea and hypoxemia, etiology unclear at this point, however, has resolved clinically after requiring a stay in the intensive care unit for 48 to 72 hours, possible influenza, etiology unknown at this point, to continue Tamiflu and Levaquin for a total of 10 days, no evidence of community acquired

pneumonia or infiltrate on chest x-ray or CAT scan, diabetes mellitus type 2, hypertension and hyperlipidemia.

Additional information provided by the claimant includes [REDACTED] [REDACTED] exams following her hospital stay. On December 7, 2009 claimant was still smoking, although less than her usual one pack per day. Chest x-ray was obtained that was negative showing heart, great vessels and hila normal in appearance, and clear lungs.

Claimant was seen again on January 20, 2010 and reported doing quite well and not using any inhalers. Claimant was still having some shortness of breath, but no cough, chest pain, palpitations, or wheezing. At March 9, 2010 exam claimant again reported doing well except for a sinus infections. Her breathing status has remained reasonably stable with use of her ProAir, which she has not required very much at all. Claimant had no chest pain, wheezing pain, radiation, or much sputum production. Impression was that of significant obstructive ventilatory defect and tree and bud syndrome on CT scan suggesting possible hypersensitivity.

August 27, 2010 physical evaluation performed at SHRT request quotes the claimant as saying she is an adult-onset diabetic for the past 4 years, she checks her blood sugars regularly, and her sugars run between 110 and 130. Claimant denied any known kidney problems or neuropathy. Claimant has also been treated for hyperlipidemia for the past 3-4 years and she believes this is also under control. Claimant related her hospital stay in November, 2009 and the cardiac consult she had at that time. Claimant denied any chest pain and believes that her stress test did not show any issues. She had not been prescribed any medications for her heart.

Claimant also stated that she had been diagnosed with asthma and was given an albuterol inhaler when she was discharged from the hospital in November, 2009, but does not like to use it because it makes her feel a bit jittery. Claimant's pulmonary function test was inconsistent. She

denied significant shortness of breath and can do her activities of daily living. Claimant was still smoking slightly less than a pack of cigarettes per day.

Physical exam revealed clear chest with equal breath sounds and no accessory muscles or respiration were noted. Claimant did not cough significantly during the initial pulmonary function testing. Claimant had good pulses and no pedal edema. She had slow but normal range of motion of the neck, back, shoulders, elbows, wrists, hands, hips, knees, ankles, and feet. There was some mild discomfort with range of motion of the left shoulder. Claimant is convinced that she has a rotator cuff injury, but stated it is not “that bad” and she had refused an MRI in the past. Claimant had no neurological deficits.

Assessment was that of adult-onset diabetes mellitus and history of hyperlipidemia. Claimant had an abnormal pulmonary function test, but that is with inconsistent effort, and she did not appear to be in any acute distress while she was examined. As far as her mental status, claimant was alert, oriented x3 and reasonable, but had a flat affect.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant did have medical issues in November, 2009 which required hospitalization, but she recovered and there is no evidence of any serious lung or heart issues. It was noted in the hospital record that claimant’s house basement has mold in it, alluding to the possibility that mold spores have caused claimant’s shortness of breath and breathing difficulties.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to

meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where 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 would have to determine if the claimant is able to perform past relevant work. As the claimant has no work history and has been a housewife and mother all of her adult life, such determination cannot be made.

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]
[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 is physically unable to do at least light 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 light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 52), with limited education and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.10.

The claimant has not 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). Although the claimant has cited medical problems, 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 and light work 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: November 4, 2010

Date Mailed: November 5, 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:

