

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: 2010-43617
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 12, 2010
Roscommon 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 12, 2010. Claimant personally appeared and testified along with her husband [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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 as material fact:

- (1) On May 27, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 1, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On July 1, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On July 8, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 27, 2010, the State Hearing Review Team (SHRT) again denied claimant's application citing insufficient evidence and requesting a complete independent physical consultative examination be obtained by the department.
- (6) Additional examination report was obtained and forwarded to SHRT for review. On September 27, 2010 SHRT determined that the claimant was not disabled as she retains the capacity to perform sedentary work per Vocational Rule 201.27.
- (7) Claimant is a 44 year old woman whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 235-240 lbs. Claimant completed 12th grade and 1 ½ years of college in nursing and automotive classes, and can read, write and do basic math.
- (8) Claimant, according to the Medical-Social Questionnaire she completed on June 7, 2010, last worked in May, 2010 as a bartender, job she held since 2008 and that ended due to not enough work and employer no longer being able to accommodate her restrictions. Claimant was also a bartender/waitress from 2006 to 2008 until the business she worked for closed, a line worker in 1999, waitress from 1999 to 2000, and worked in a dry cleaning business in 1999.
- (9) Claimant lives with her husband and two children one of which is on disability in a house they are purchasing. Claimant has a driver's license and drives 5-10 miles per week to get groceries, but does not cook or clean because it is difficult for her to stand long enough. Claimant reads, watches TV and walks on state land to pass the time.
- (10) Claimant alleges as disabling impairments back pain, foot drop, carpal tunnel syndrome and asthma.
- (11) Claimant has applied for Social Security disability and her claim is 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 May, 2010. 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 February 10, 2007 neurosurgeon letter stating that the claimant has undergone a partial hemilaminectomy for almost a totally extruded disk, and that a couple of days after the surgery she noticed her foot was starting to turn down and turn in with a sensation of numbness on the top of her foot. It is possible that the claimant had extruded another fragment of disc and further testing was needed.

September 4, 2009 Patient Message to claimant's doctor states that the claimant called asking for more pain medications, but since her last provider would not continue to write for any opiates or muscle relaxers due to her urine drop being positive for THC and negative for opiates despite continued monthly refill of prescriptions, this request was refused.

February 8, 2010 doctor's visit indicates that the claimant's lumbar MRI of February, 2007 shows minimal degenerative spondylosis throughout the majority of the lumbar spine other than L5-S1. At L5-S1, there is retrolisthesis, prior left laminectomy, and relatively mild epidural scarring with a broad-based relatively mild disc herniation eccentric to the left as described above. Claimant also has a hiatal hernia diagnosed at 16 years of age. She smoked a pack of cigarettes per day but denied drug or alcohol abuse.

On March 30, 2010 claimant called her doctor requesting stronger pain medication as she was working 7 days a week for a while. Claimant was told she would not be prescribed more narcotics.

Medical Examination Report of June 10, 2010 states as claimant's current diagnoses lumbosacral disc disease and radiculopathy, hypertension and high cholesterol. Claimant was 5'8" tall and weighed 260 lbs., with blood pressure of 126/80. All of claimant's examination areas were normal with exception of leg raises being positive. Claimant was limited to lifting/carrying less than 10 lbs. occasionally, and could not reach or push/pull with either hand. Claimant had no mental limitations.

██████████ medical evaluation of August 17, 2010 quotes the claimant as saying her chief complaints are back problems and left foot drop. Claimant has a history of degenerative disc disease to her back for the past 10 years when she slipped on some water while working at a hotel. Claimant's symptoms worsened, she had an MRI study which showed a disc herniation, she underwent a laminectomy and developed a left foot drop.

Claimant lived with her husband and children, was able to do activities of daily living and drive on occasion, but did not do any cooking or household chores. She was cooperative in answering questions and following commands, but appeared in mild discomfort. Claimant's immediate, recent and remote memory is intact with normal concentration, and her insight and judgment are both appropriate.

Physical examination indicates that the claimant was 65.5" tall and weighed 266 pounds. Her breath sounds were clear to auscultation and symmetrical. There was no evidence of joint laxity, crepitance or effusion. Grip strength was decreased bilaterally to about 50%. Dexterity was unimpaired. Claimant could tie, button clothing and open a door, but had severe difficulty with heel and toe walking. Straight leg raising was negative. There was no paravertebral muscle spasm. Motor strength was diminished to 4/5 in the left lower extremity. Tone was normal. Sensation was diminished in the left leg and claimant walked with a mild left limp without the use of an assist device. Ankle reflexes were 2+ right and 1+ left.

Examiner's conclusion is that of back pain. Claimant underwent a laminectomy and of concern at this point is the sensory loss at L3-4. Claimant had significant difficulty doing orthopedic maneuvers due to weakness in the left leg, but there was no atrophy noted. Claimant would benefit from a brace to the left foot for stabilization of the left ankle. She is at risk for developing traumatic injury to the left ankle, but unfortunately this does not appear remediable. Claimant will most likely require a fusion at some point for stabilization. Her right side appears normal. Claimant does have a history of carpal tunnel syndrome, but there were no neuropathic symptoms during the exam and she was able to do manipulative tasks.

An EMG and nerve conduction study was abnormal and consistent with radiculopathy in L5 and S1 root distribution and partial foot drop.

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 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 would have to find that the claimant most likely has the ability to perform past relevant work. Claimant's most recent past relevant work was as a bartender, job she held from 2008 to May, 2010, when she applied for MA and SDA. Claimant lists as reason for leaving "not enough work no longer accommodates restriction". (p. 67). Claimant testified that she left this job because she could not lift heavy weight. Claimant has performed this job for 2 years after her back issue and left foot drop were identified in year 2007. Department's Hearing Summary indicates that the claimant lost her previous MA coverage when her children turned 18 and graduated in June, 2010. That the claimant's medical condition suddenly deteriorated to the point she could no longer perform the job she held for 2 years cannot be concluded with certainty. Finding that the claimant is unable to perform work which she has engaged in the past cannot therefore be reached and the claimant is 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 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. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 44), with more than high school education (claimant has 1 ½ years of college) 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 or mental 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.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary 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: December 15, 2010

Date Mailed: December 15, 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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