

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.: 2010-46124
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 20, 2010
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Taylor, Michigan on Monday, September 20, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The records were received, reviewed, and entered as Exhibit 6. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly found the Claimant not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P benefits on December 11, 2009.
2. On February 16, 2010, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. The Department notified the Claimant that she was found not disabled.

4. On July 22, 2010, the Department received the Claimant's timely written request for hearing.
5. On August 13, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant has alleged physical disabling impairments due to diabetes, neuropathy, retinopathy, liver damage, migraines, high blood pressure, pancreatitis, kidney disease, and back pain.
7. The Claimant has alleged mental disabling impairments due to manic depressive disorder.
8. At the time of hearing, the Claimant was 31 years old with a [REDACTED] date of birth; was 5'4" in height; and weighed 155 pounds.
9. The Claimant graduated from high school under a special education program and has a work history as a general laborer and child care provider.
10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("BRM").

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to

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establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means

work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR

916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on diabetes, neuropathy, retinopathy, liver damage, migraines, high blood pressure, pancreatitis, kidney disease, back pain, and manic depressive disorder.

On [REDACTED], the Claimant presented to the hospital with complaints of left side pain and abdominal pain. The final diagnosis was acute pyelonephritis.

On [REDACTED], the Claimant presented to the hospital with complaints of diarrhea. The Claimant was discharged on [REDACTED], with the diagnoses of cholecystitis, chronic bronchitis, migraine cephalgia, and diabetes mellitus with diabetic peripheral neuropathy.

On [REDACTED], chest x-rays revealed persistent right basilar infiltrate.

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On [REDACTED], the Claimant presented to the hospital with complaints of abdominal pain. The Claimant discharge diagnoses were acute hyperglycemia without DKA, acute abdominal pain, acute dehydration, and acute pancreatitis.

On [REDACTED], the Claimant was admitted to the hospital with complaints of intractable nausea, vomiting, diarrhea, and abdominal pain. The Claimant was discharged on [REDACTED] with the diagnoses of type I diabetes, hypothyroidism, gastroesophageal reflux disease, and migraines.

On [REDACTED], the Claimant presented to the hospital with complaints of nausea and vomiting. The Claimant was discharged on [REDACTED] with the diagnoses of DKA, acute pancreatitis, hypothyroidism, acute renal failure, hyperlipidemia, and hypertension.

On [REDACTED], the Claimant presented to the hospital with complaints of headaches, abdominal pain, and bilateral leg pain. The Claimant was discharged on [REDACTED] with the diagnoses of bilateral lower extremity pain, generalized anasarca, acute renal failure, hypertension, diabetes mellitus type 1, depression, anxiety, and hypothyroidism.

On [REDACTED], the Claimant was admitted to the hospital with complaints of abdominal pain and lesion on the right lower extremity. During the hospitalization, a mental status examination was performed. The diagnosis was mood disorder and the Global Assessment Functioning ("GAF") was 30.

On [REDACTED] chest x-rays found the heart at the upper limits of normal size.

On [REDACTED], the Claimant presented to the hospital with complaints of swelling. The Claimant was discharged on [REDACTED] with the diagnoses of chronic kidney disease with acute exacerbation, probable diabetic or hypertensive nephrosclerosis, juvenile diabetes mellitus, hypothyroidism, dyslipidemia, cellulitis of the right lower extremity with multiple wounds, chronic pain, hypertension, and anemia. The Claimant's medication non-compliance (lack of insurance) was also noted.

On [REDACTED], the Claimant presented to the hospital with complaints of right upper and abdominal pain. The Claimant was discharged on [REDACTED] with the diagnoses of acute pancreatitis, acute abdominal pain, diabetes mellitus type 2, and recurrent pancreatitis.

On [REDACTED], the Claimant presented to the hospital with complaints of leg swelling. The Claimant was treated and discharged with the diagnoses of hypothyroidism, acute renal failure, hypertension, and peripheral edema.

On [REDACTED], the Claimant attended a consultative evaluation. The diagnoses were diabetes, liver damage, hypothyroidism, chronic joint and back pain, and hypertension.

On [REDACTED], the Claimant attended an ophthalmologic examination. The Claimant's visual acuity is finger count only. The near acuity with and without correction is count fingers only at 14 inches. This did not improve with glasses. The Claimant was diagnosed with diabetic retinopathy and macular edema. The Claimant has severe non-proliferative retinopathy on the right side and high-risk proliferative retinopathy on the left side. The Claimant also has severe macular edema on both sides. Based on these findings, the Ophthalmologist opined that the Claimant would have difficulties with work-related activities and that her prognosis is poor. The Claimant requires aggressive retinal treatment and even with the best of care, her vision is not likely to improve.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that she does have physical and mental limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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. The Claimant asserts disabling impairments due to diabetes, neuropathy, retinopathy, liver damage, migraines, high blood pressure, pancreatitis, kidney disease, back pain, and manic depressive disorder.

Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

In this case, the objective evidence reveals several hospitalizations due to abdominal pain, diabetes mellitus, neuropathy, lesions, extremity swelling, diabetic retinopathy, and macular edema. The Claimant's prognosis is poor and she requires aggressive retinal treatment. Ultimately, after review of the objective medical evidence as detailed above, the Claimant's impairments meet or are the medical equivalent thereof, a listed impairment within 9.00, specifically, 9.08. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the December 9, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.
3. The Department shall supplement for any lost lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance with department policy in October 2011.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 9/28/2010

Date Mailed: 9/28/2010

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

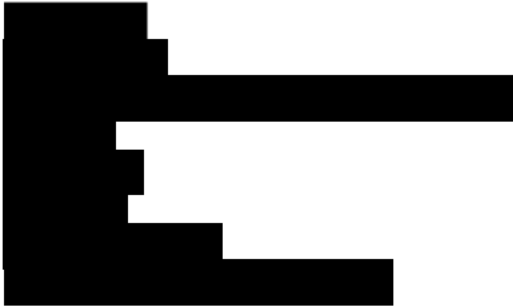
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reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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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