

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: 2010-1918
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
Eaton 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 November 19, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her relative [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 April 29, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 5, 2009, 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 August 14, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 20, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating she was capable of doing her past relevant work as a service representative.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for review. On March 29, 2010 SHRT once again determined that the claimant is not disabled, as she retains the physical residual functional capacity to perform light work, such as her past work in customer service.

(7) Claimant is a 42 year old woman whose birthday is [REDACTED]. Claimant is 5'2" (states she "shrunk" from being 5'3" tall) and weighs 168 pounds after losing 27 pounds. Claimant completed high school and some college classes in communication, business and management. Claimant can read, write and do basic math. ■

(8) Claimant states that she is currently employed but on long term disability from her job as a service representative for [REDACTED] call center, job she has held since [REDACTED]. Claimant was also a service representative for a telephone company from 1994 to 2005.

(9) Claimant has a driver's license but drives only in cases of emergency as the doctor told her not to because her legs "lock up". Claimant lives with her husband in an apartment and receives some financial help from her family along with food stamps. Claimant is

not receiving her long term disability payments as her doctor did not send in needed paperwork on time.

(10) Claimant alleges as disabling impairments arthritis, painful cervicalgia, degenerative joint disease, tear, disc bulging and herniation in spine, right shoulder issues, right knee issues from several surgeries, carpal tunnel syndrome, cysts on top of nerves that make her hands go numb, chronic anemia as her body does not absorb iron, chronic insomnia, throat problems with nodules on her larynx and cyst on her vocal cord for which she had surgery in October, 2009, numb toes from possible low B-12, bone density scan that is indicating osteoporosis, osteoarthritis, 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).

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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that she is on long term disability from her job. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is “severe”. 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).

The objective medical evidence on the record includes an MRI of claimant’s right shoulder of January 5, 2008. Impression is that of advanced degenerative change in the shoulder with large subchondral cystic change, sclerosis, spurring and loose bodies. There is no definite humeral head collapse to suggest advanced avascular necrosis. The loose bodies are located in the biceps tendon sheath as well as in the collar bone area.

MRI of claimant's cervical spine of June 5, 2007 shows right paracentral disc protrusion at C4-C5 causing mass effect on the anterior aspect of the cord and some mild stenosis centrally, small protrusion at the C3-C4 level causing some minimal mass effect on the thecal sac and cord without frank canal stenosis or cord compression, and mild degenerative changes at C5-C6 and C6-C7, as described. No other evidence for disc herniation or canal stenosis is identified.

Letter from claimant's treating physician to [REDACTED] dated [REDACTED] states that she is being treated for chronic neck and shoulder pain from degenerative arthritis, and chronic knee pain issues. Claimant's medical condition has not improved despite being on pain medications and receiving physical therapy. Claimant can only sit for one to two hours, but with interruption due to pain in her joints. Claimant is able to walk part of the day but not continuously because of the severity of her knee pain. She can stand for one hour, intermittently, and can lift a maximum of 10 pounds but not frequently or continuously. Claimant is unable to reach overhead, stoop or climb.

Medical Examination Report for an exam of June 26, 2009 marks all of physical examination areas as normal for the claimant except decreased range of motion in the right shoulder and both knee crepitus. Claimant's condition is stable and there is no acute worsening. Claimant is limited to lifting less than 10 lbs. occasionally, standing and/or walking less than 2 hours in an 8-hour work day, and sitting less than 6 hours in an 8-hour work day. Claimant cannot use her feet/legs for operating foot/leg controls due to arthritic changes in both knees, and cannot reach, push, pull or perform fine manipulating with her right arm due to right shoulder issues. Claimant has no mental limitations and can meet her needs in the home without assistance.

Additional medical information submitted by the claimant following the hearing has a cover memo from the county caseworker stating that [REDACTED] did not send any additional medical records and the claimant did not send the reports from her rheumatoid doctor either, and has not even replied to the Verification Checklist sent to her on February 22, 2010, reminding her to provide these records. MRI of September 14, 2009 shows severe degenerative changes of claimant's right knee joint. Claimant was seen on September 11, 2009 for an earache, but her hearing was unchanged. Claimant also reported having some issues with dysphagia, trouble with food seeming to stick, and this has been a progressive problem over the past 6 or so months. Physical exam is normal except for joint pain in the right knee and swelling, stiffness or limited motions sometimes with this knee. Claimant's right knee was tender and with joint crepitus. Neurologically claimant had no numbness, tingling or weakness in any of her extremities, no speech problems or memory changes, and no trouble with walking or balance. Claimant appeared well and in no distress. Claimant had full range of motion without pain in her neck.

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. Analysis therefore continues to Step 3.

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. See Appendix 1 of

Subpart P of 20 CFR, Part 404, Part A. 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 deny the claimant based upon her ability to perform past relevant work. Claimant's past relevant work was in a call center, job from which she was on leave from at the time of the hearing. This type of job is sedentary to light and would involve mainly sitting. Finding that the claimant is unable to perform work which she has engaged in 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] [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 and possibly light work. Under the Medical-Vocational guidelines, a

younger individual age 18-44 (claimant is 42 years of age), with high school or more education (claimant has a high school diploma and attended 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.

In conclusion, 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.

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, retroactive 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: July 20, 2010

Date Mailed: July 20, 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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