

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: 2010-1920
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 17, 2009
Saginaw 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 17, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her brother [REDACTED] and her friend [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 January 28, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 8, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of performing other work.

(3) On July 14, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 17, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 22, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant retains the capacity to perform a wide range of simple, unskilled, light work, citing Vocational Rule 202.17 as a guide. SHRT also cited Public Law 104.121 due to materiality of drug and alcohol abuse.

(6) Claimant presented additional medical evidence following the hearing that was forwarded to SHRT for additional review. On February 2, 2010 SHRT once again determined that the claimant was not disabled, for the same reasons stated in their October 22, 2009 decision.

(7) Claimant is a 44 year old woman whose birthday is [REDACTED]. Claimant is 5'6 ½ " tall and weighs 144 pounds after gaining 35 pounds due to taking medication Seroquel. Claimant does not have a high school diploma and cannot spell, reads very little, and can do only very basic math.

(8) Claimant states that she last worked in October, 2008 busing tables in a restaurant job that lasted her 8 months and from which she was let go due to medical problems. Claimant also worked at the same restaurant in year 2000.

(9) Claimant currently lives in an apartment and receives food stamps. Claimant's rent, phone bill, and other needs are paid for by her parents and with help from friends. Claimant testified that she has no driver's license and never had one due to panic attacks and anxiety.

(10) Claimant has applied for Social Security disability and been denied, and is appealing the denial.

(11) Claimant alleges as disabling impairments: low back pain, degenerative disc disease, panic disorder, depression, manic depressive disorder, sleeping disorder, seizures, rheumatoid arthritis, pin hole in her heart and possible lupus.

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 year 2008. 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 Psychiatric/Psychological Medical Report of June 8, 2009. Claimant reported having frequent panic attacks and anxiety, and problem with acid reflux and a “nervous ulcer”, explaining that her nerves cause an excess acid in her stomach resulting in the ulcer. Claimant was asked if she had been drinking and at first denied it, but then admitted to drinking four beers “last night”. Claimant stated she was working on her problem with alcohol, that she is trying to cut down her drinking to every other day at this time, and plans to taper down to nothing. A review of claimant’s chart indicates that she had an evaluation done in November, 1997, and at that time stated she was working on cutting down her use of alcohol. Claimant was soft-spoken, pleasant and cooperative, but had many tearful episodes throughout the evaluation, mainly due to all of her medical issues. Claimant denied any auditory/visual hallucinations, and was oriented to time, person and place. Claimant stated she gets depressed very easily and has frequent tearful episodes. Claimant’s diagnosis was that of alcohol dependence, major depression-recurrent, borderline personality disorder, and complaints of chronic pain in her back and neck, hypertension, ulcer and muscle cramps. Claimant’s GAF was 42 and her prognosis is very poor, due to a long history of alcohol dependence that is somewhat enabled by her friends and family, as they take care of her needs while she continues to drink large quantities of alcohol. The evaluator suggested that the claimant consider going through detox and treatment for a substantial period of time – at least thirty days or more. In addition, she should consider seeing a specialist in pain management, because she may be self-medicating with alcohol. Due to claimant’s chronic pain and health issues as well as her daily use of alcohol, employment at this time does not appear possible.

It is noted that claimant testified at the hearing that she continues to drink, 1-2 beers on a good day and 6-8 beers on a bad day, and that she did not indicate that she has attempted any type of treatment for her alcoholism.

Medical Needs form completed in July, 2008 states that the claimant cannot work at any job, but can participate in Work First classes daily, Monday to Friday from 8:00 am to 4:00 pm to help secure employment. Medical Examination Report of the same date indicates that claimant has low back pain, sciatica, left leg loss of range of motion, and alcohol issues. Claimant can not lift/carry any amount of weight, can only stand and/or walk less than 2 hours in an 8-hour workday, cannot operate foot/leg controls and cannot use either hand/arm for pushing/pulling. Claimant has no mental limitations. Medical Examination Report of February, 2009 indicates claimant can lift less than 10 lbs., that she cannot use her hands/arms for any repetitive actions and can only use her right foot/leg for operating foot/leg controls, that she is limited in reading/writing, and that she needs home help.

MRI of claimant's spine of February 21, 2008 due to complaints of severe low back pain, progressing in the last 7 months, shows mild degree of hypertrophic degenerative facet changes at L3-L4 through L5-S1. At L3-L4 level there is mild broad based disk bulge along with hypertrophy of the facet joints causing mild central canal stenosis and thecal sac compression.

August 20, 2008 report from a neurosurgeon who reviewed claimant's MRI and examined her states that on examination the claimant does seem to have some limitation and range of motion of her neck and spinal spasm. She does have some weakness of her grip and some sensory changes, but her reflexes are equal in all four extremities, she has negative straight leg raising, 5/5 strength of the deltoids, biceps triceps, quadriceps, good dorsiflexor, plantar flexion function of her feet and normal strength. Neurosurgeon does believe that the claimant

has degenerative disc disease probably affecting the cervical, thoracic and lumbar spine, but that she is not a surgical candidate at this time.

History and Physical Exam of March, 2009 quotes the claimant as having multiple complaints and not focusing on any one problem. Claimant's reflexes in the lower extremities were diminished, as was the cervical range of motion. Straight leg raise was negative and gait nonantalgic.

April 23, 2009 report from a neurosurgeon for a follow-up visit states that claimant's lab work was essentially within normal limits except for the rheumatoid factor which was considerably elevated at 108. Claimant had already been referred to a rheumatologist by her family doctor. Claimant's reflexes were 2/5 but absent at the ankle. Claimant's ambulation was appropriate and nonantalgic, her balance was good, but hyperextension produced pain in the thoracic area, and the flattening of the thoracic kyphosis was noted. Impressions were that of rheumatoid arthritis, facet syndrome, and degenerative disc disease.

██ scan was unremarkable.

██ report pertaining to physical therapy administered to the claimant in January and February, 2009 states that the claimant is being discharged due to insufficient gains expected with continued therapy, and that she is to continue with home exercise program as per written instructions provided. Claimant admitted to being very depressed and is now on anti-depressant and Vicodin. Claimant was set up for psychological counseling with the social worker, however arrived for counseling intoxicated, so could not be treated.

██. medication review quotes the claimant as saying she is not sleeping and still feels depressed, but denying any suicidal or homicidal thoughts and plans. Claimant was cooperative, her hygiene, grooming and

psychomotor movements adequate, she made good eye contact, but her mood was depressed, her affect constricted, and thought processes while coherent irrelevant at times. Current diagnosis is that of major depression, recurrent, severe, with psychotic features (as claimant reported having paranoid delusions), panic disorder, and bipolar mood disorder.

April, 2009 rheumatology consultation showed the claimant had no distinct features of active synovitis related to rheumatoid arthritis but she did have at least intermittently symptomatic inflammatory arthropathy. Claimant was again seen on June 18, 2009 and it is noted that she had been non-compliant to both medication instructions and clinic visit attendance. Claimant did not keep her May 22, 2009 appointment and started taking her Prednisone on May 22, 2009 instead of May 15, 2009, and instead of taking it for only one week, took it continuously. Claimant reported to the nursing staff that the Prednisone supposedly helped the base of the palm and the lateral aspect of the midfoot where actually she had no physical examination abnormalities. On June 4, 2009, claimant was trying to get the clinic to prescribe Tramadol for spine pain which was not the original indication for the consultation to begin with. No additional rheumatologic surveillance on the basis of non-compliance will be further provided.

June 11, 2009 exam revealed that the claimant had no edema, and had tremors present in both upper extremities but no flapping tremors appreciated. Claimant's neurological examination was otherwise normal.

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. 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 has to consider claimant's ability to perform past relevant work. Claimant's past relevant work history is not extensive, with her last job ending in 2008 after 8 months of being a busser in a restaurant. Claimant may have an issue with performing such duties if they involve heavy lifting. Finding that the claimant is unable to perform work which she has engaged in in the past could therefore be reached and the claimant is not 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 is physically unable to do sedentary and light work if demanded of her. Claimant has chronic pain with disc bulge at several levels, but no evidence of significant neurological abnormalities. Claimant did have tremors present in both upper extremities, but the cause of such tremors could be her continued significant use of alcohol, as she testified at the time of the hearing she drinks 6-8

beers per day on a “bad day”. Claimant also suffers from depression and has been in therapy and receiving medication for her psychological issues, however neither the therapy or medication can be totally effective as long as the claimant continues to consume alcohol on a daily basis.

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 light work.

Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is age 44), who is even illiterate or unable to communicate in English (claimant has limited education and speaks English), and with unskilled or no work history is not considered disabled under Vocational Rule 201.23. It is noted that the claimant’s treating physician felt that the claimant was not capable of any work, but was capable of participating in Work First activities five days per week, 8 hours per day, and claimant’s participation in such activities is also mentioned in her record.

As already stated, claimant’s record and her hearing testimony establish that she has had a significant alcohol abuse problem for many years. Even if this Administrative Law Judge was to determine that the claimant is disabled, she would have to consider if her alcoholism is material to her disability. The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person’s disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person’s drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations,

that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

In claimant's case, while she does have both physical and psychological issues, her continued use of alcohol appears to be preventing successful treatment of both. Claimant was non-compliant with medications and showed up intoxicated for her counseling appointments, and has not taken the advice of the medical source to seek in-patient treatment for her alcoholism. Therefore, as already stated, even if the claimant was found to be disabled, DAA would be material to her disability at the present time.

In conclusion, 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 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: August 2, 2010

Date Mailed: August 3, 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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