

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: 2010-2721
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
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 November 19, 2009. Claimant personally appeared and testified.

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 29, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 23, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 7, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 26, 2009, the State Hearing Review Team again denied claimant's application stating the claimant retains the capacity to perform a wide range of sedentary work, and using Vocational Rule 201.27 as a guide.

(6) Claimant's Social Security disability application had been denied by Social Security Administration (SSA). Claimant had an SSA administrative hearing on the denial and received an unfavorable decision on December 18, 2008. Claimant appealed this decision to SSA's Appeals Council and testified at the hearing that she was denied at this SSA level also. Claimant however testified that her condition has now worsened and was to provide additional medical information.

(7) Hearing record was left open so that the claimant could provide additional information. On February 18, 2010 department informed that the claimant had not provided any additional information and that there has been no contact from her.

(8) Claimant is a 29-year-old woman whose birthday is April 17, 1981. Claimant is 5'10" tall and weighs between 180 to 190 pounds. Claimant completed high school and took some college classes in business management and accounting.

(9) Claimant stated that she last worked in August, 2008 for 2 months collecting donations by telephone, job that ended because she took a lot of time off work. Claimant has

also worked in several law firms as a secretary, with her longest job being 3 years, but claims such work ended due to medical problems.

(10) Claimant lives with her father who supports her and receives food stamps.

Claimant has a driver's license and drives short distances.

(11) Claimant alleges as disabling impairments multiple sclerosis, fibromyalgia, back problems and depression.

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 four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at Step 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 August, 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.

Departmental policy states that SSA's determination that disability or blindness does not exist for SSI is final for MA if the determination was made after 1/1/90, and no further appeals may be made at SSA (meaning Appeals Council has denied a claimant), or the client failed to file an appeal at any step within SSA's 60 day limit, and the client is not claiming a totally different disabling condition than the condition SSA based its determination on, or an additional impairment(s) or change or deterioration in client's condition that SSA has not made a

determination on. Eligibility for MA based on disability or blindness does not exist once SSA's determination is final. BEM 260.

In claimant's case, SSA's Administrative Law Judge made a decision on December 18, 2008 that she was not disabled, and this decision is contained in the hearing packet.

Furthermore, a decision of SSA's [REDACTED] dated May 13, 2009 is also contained in the hearing packet, denying claimant's appeal of the Administrative Law Judge's decision.

Therefore, the question that remains for this Administrative Law Judge is to determine whether claimant now has a totally different disabling condition than the condition SSA based its determination on, or whether there is an additional impairment(s) or change or deterioration in her condition that SSA has not made a determination on. To complete such determination, this Administrative Law Judge will first cite medical issues from SSA's Administrative Law Judge's decision that were considered when making SSA's disability determination.

The decision states that the claimant has been diagnosed with multiple sclerosis but does not exhibit disorganization of motor function in any extremity and no significant visual or mental impairment. Also, the claimant is status post lumbar laminectomy in December, 2007, but subsequent examinations indicate she has recovered from her surgery, is neurologically intact and exhibits good strength in all the extremities. These conclusions were based on medical records from December, 2005 through June, 2008. The claimant has been diagnosed with multiple sclerosis but the treating neurologist has consistently indicated that the claimant is doing reasonably well and that her multiple sclerosis is stable. The claimant consistently exhibits 5/5 strength in the upper extremities, intact coordination, 4/5 strength in the lower extremities, normal range of motion of all the extremities, and intact sensation. In February 2008, the treating neurologist characterized the claimant's multiple sclerosis as stable and noted that the

claimant was doing reasonably well. This assessment is consistent with the claimant's significant work activity since October, 2007. Moreover, the claimant's employer in July, 2008 indicated that the claimant was a great employee, worked hard, and did not miss much work (SSA's Administrative Law Judge's decision quoting Exhibit 6D).

On December 19, 2007, the claimant underwent a lumbar laminectomy at L4-5, after a previous CT scan of the lumbar spine indicated a herniated disk. In January 2008, the claimant exhibited a normal musculoskeletal evaluation with good strength in the lower extremities and intact sensation. In February 2008, the claimant exhibited a normal motor evaluation, very mild spasticity in the lower extremities, intact sensation, and intact coordination.

As far as claimant's mental limitations, evidence reviewed by SSA indicates that the claimant had mild restrictions in activities of daily living. Claimant had performed work activity successfully from October, 2007 through July, 2008 which is consistent with the finding that the claimant does not have significant limitations maintaining her activities of daily living. Claimant's neurological evaluations consistently indicate intact mental functioning, and the claimant would have no significant difficulty handling simple repetitive tasks. Claimant has experienced no episodes of decompensation, which have been of extended duration. The claimant has not been hospitalized for depression or anxiety and has not sought significant treatment for mental health issues.

The Administrative Law Judge will now address additional medical evidence provided for this hearing to determine if the claimant has a new condition, or whether her condition has deteriorated since SSA's final determination.

February 9, 2009 neurological consultation states that the claimant denied any acute MS attack episode since 2005. Claimant did complain of numbness, tingling from the waist down,

and of persistent weakness on the left side of the body and balance issues as well. Claimant also complained of the intermittent headaches, seeing white spots sometimes, of tremors intermittently with a shaking feeling of the body, severe lower back pain intermittently, and also severe generalized muscle pain. Claimant's blood pressure was 124/90, and she weighed 168 lbs.. Claimant appeared well nourished, developed with no deformity, and not in any acute distress. Claimant had some edema of the lower legs, but no obvious tenderness of the body. Claimant was alert, oriented, with fluent and comprehensive speech, had normal recent and remote memory, normal attention span, and normal fund of current knowledge. Motor exam revealed some mild tremor, especially on the left arm and they were posturing tremors. There was no rigidity and the muscle strength showed left side of the arm weakness and also left leg weakness, but there was no obvious muscle atrophy. Claimant's reflexes were present and symmetric, but she had impaired rapid alternating movements. Claimant limped slightly due to the mild left leg weakness, but had no shaky movements and no shuffling gait. Sensation subjectively showed slightly decreased sensation on light touch on the left side of the body. Claimant was to be switched to different medications, as she was having severe side effects of the Avonex injection with flu-type symptoms and usually was disabled for about almost 4 days after the injection.

In March, 2009 claimant stated she was doing much better with Percocet, and that her fatigue has improved. Claimant was well-appearing and in no acute distress, her judgment and insight were intact as well as her recent and remote memory, and she was alert to person, place, time and situation. Claimant was to continue Percocet for low back pain.

In April, 2009 claimant reported she missed 1 week does of Lyrica because she forgot to take it and found out the value of taking it, as she was now hurting all over.

In May, 2009 claimant's weight was steady and she had no muscle spasms or weakness. Claimant did have pain in her right shoulder and was advised to do shoulder exercises. Claimant was smoking 1 pack of cigarettes per day.

████████████████████ medical evaluation of June 27, 2009 quotes the claimant as saying she is currently on Lyrica and Rebif. Claimant was not undergoing any physical therapy. She uses a wheel chair and a walker, and reported having intermittent flares of MS with her last Prednisone dose being in 2008. Claimant did her activities of daily living and was able to drive on occasion, but did not do any household chores or cooking. Claimant reported sleeping a lot because of pain, that she could walk about 75 feet, sit and stand about 20 minutes, and that she could not lift anything more than 10 pounds. Claimant was now smoking ½ pack of cigarettes per day.

Claimant was dressed casually and was in no acute distress. She was cooperative in answering questions and following commands. She made use of an AFO device on the left foot. Claimant's immediate, recent and remote memory was intact with normal concentration. Her insight and judgment were both appropriate and she provided a good effort during the examination. Physical examination revealed no clubbing, cyanosis, or edema, and intact peripheral pulses. Examiner found no evidence of joint laxity, crepitation, or effusion. Claimant's grip strength remains intact and dexterity is unimpaired. Claimant had mild difficulty getting on and off the examination table, was unable to heel and toe walk, had severe difficulty squatting, and was unable to hop. Conclusion was that of multiple sclerosis. The claimant did have findings of sensory and power loss in the left leg, and this was more related to her MS. Claimant also had hypoflexia bilaterally today, more pronounced on the left than the right, and difficulty doing orthopedic maneuvers. Claimant had definitive weakness on the left side and

did compensate with a moderate left limp. Claimant could benefit from the continued use of her AFO device for balance control, and also from her cane and a walker as needed. At this point unfortunately her long-term prognosis does appear guarded but there was no active deterioration noted.

This Administrative Law Judge concludes that the claimant's condition appears to have deteriorated since SSA Appeals Council's decision, and such decision therefore does not need to be considered final as far as MA eligibility determination. Claimant also testified that she has re-applied for SSI based on her condition being worse. 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 finds that the claimant would have difficulty performing her past relevant work. Claimant's past relevant work was as a telephone solicitor and in secretarial work. Claimant testified that she left her jobs due to medical problems. Claimant also testified that she has a very short attention span and is in constant daily pain for which she is prescribed morphine. Claimant's testimony is supported by her medical record as a whole and found to be credible. Finding that the claimant is unable to perform work which she

has engaged in in the past can 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 sufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, and that she is physically unable to do even sedentary work if demanded of her. Claimant's medical record coupled with her credible hearing testimony of constant daily pain, inability to sit stand or walk for any significant period of time, and that her medical condition affects her mentally as she gets confused and her attention span is short, would make the claimant unable to perform even sedentary work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has no residual functional capacity to perform other work. Claimant is not disqualified from receiving disability at Step 5.

In conclusion, 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). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is 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 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 meets the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA, retro MA and SDA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed January 29, 2009 MA, retro MA and SDA application and award her any such benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility criteria).
2. Notify the claimant of this decision.
3. Review claimant's ongoing MA and SDA eligibility in September, 2011, at which time updated medical information is to be obtained.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 16, 2010

Date Mailed: August 17, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

IR/tg

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