

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: 2010-36477
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 23, 2010
Cheyboygan 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 June 23, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her husband [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

(1) On January 22, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 10, 2010, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.

(3) On May 13, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On May 24, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 7, 2010, the State Hearing Review Team again denied claimant's application stating she retains the capacity to perform a wide range of simple, unskilled, medium work per Vocational rule 203.21.

(6) Claimant is a 54 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 213 pounds. Claimant completed 12th grade and can read, write and do basic math.

(7) Claimant states that she last worked in September, 2009 as a clerk in campgrounds in the north in the summer and south in the winter. Claimant did this type of work for 2 ½ years until her truck blew up and then her health declined and she could no longer work. Claimant has also worked as a clerk in a fudge shop, convenience store clerk, babysitter, and a cook briefly.

(8) Claimant currently lives with her husband in a camper on her daughter's property and receives food stamps. The couple has no income and receives some financial help from a relative. Claimant has a driver's license but does not drive as she gets too anxious, rarely cooks or goes grocery shopping, and states that she spends most of her days sleeping.

(9) Claimant alleges as disabling impairments: celiac disease, congestive heart failure, rheumatoid arthritis, COPD, severe chronic diarrhea, degenerative disc disease causing

her back pain, sciatica pain, knee issues from a knee replacement surgery 6 years ago, high blood pressure, obstructive sleep apnea, PTSD that developed after a cruise ship she was on in 2003 caught fire, depression and anxiety.

(10) Claimant has applied for Social Security disability in March, 2010 and her claim was pending as of the time of the hearing.

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 one, 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 two, 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 three, 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 four 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 September, 2009. 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 September, 2007 medical exam for evaluation of claimant's joint pain. Physical examination revealed that the claimant was obese at 233 pounds and height of 5'3 1/4". All of claimant's examination areas were normal except for the swelling of both hands and wrists and reported pain with movement. Claimant also reported achy joints all over. Impression was that of rheumatoid arthritis, degenerative disc

disease of the lumbosacral spine, chronic hematuria, and fluid retention secondary to fluid overload. Claimant was advised to quit smoking and lose weight, and to restrict fluids during the day.

Medical exam of January, 2010 states that the claimant was 220 pounds. Claimant was feeling tired, had psychomotor retardation, and was unhappy and dysphoric. Claimant complained of bloating and epigastric pain which is chronic and frequent. Claimant's affect was flat and restricted. Diagnoses included benign essential hypertension, Barrett's esophagus, gluten enteropathy, rheumatoid arthritis, major depression-single episode, obstructive sleep apnea and acquired polycythemia.

Claimant was seen again in January, 2010, at which time she was 225 pounds. Claimant had edema and the abdomen revealed loud sounds and tenderness, and diarrhea. Claimant also had swollen hands and knees and was weak. Neurological findings were within normal limits. Claimant was depressed, fatigued and had very poor concentration. Claimant's condition was listed as deteriorating and she was limited to only occasionally lifting/carrying 10 lbs. and standing and/or walking less than 2 hours in an 8-hour work day.

[REDACTED] quotes as claimant's chief complaints diarrhea, depression, high blood pressure, rheumatoid arthritis, chronic obstructive pulmonary disease and celiac disease. Claimant was not using an assistive device. Claimant stated she has had diarrhea since July, 2009 up to four times daily, and that she has lost about 30 pounds in the past year. Claimant also related a history of shortness of breath over the past 10 years with associated sleep apnea. Claimant has smoked one pack per day for the past 40 years. Physical examination revealed that the claimant was 220 pounds with blood pressure of 110/72. Breath sounds were clear. There was no joint laxity, crepitation or effusion. Grip strength was

intact and dexterity unimpaired. Claimant had tenderness in the lumbar spine, but her motor strength and tone were normal. Sensory functions were intact, reflexes were 2+ and symmetrical in the lower extremities, and she had a normal gait. Conclusions were that of arthritis and shortness of breath. Claimant did appear quite anxious and some of her chronic diarrhea may be caused by the underlying anxiety disorder.

Mental status exam of March 4, 2010 states that the claimant related she was on a cruise ship when it caught fire around 1996 and since then she has had panic attacks, has PTSD, and severe depression. Claimant was currently involved in mental health treatment and in the past saw a psychologist related to the incident on the cruise ship. Claimant was psychiatrically hospitalized after her cruise ship incident and was at that time referred for inpatient care by a psychologist. Claimant took care of her own bathing and dressing, but her husband took care of finances, shopping, most of household chores and some of the cooking. Claimant's days consisted of watching television and sleeping two to three times a day. Claimant rocked at times during her interview. Claimant did not appear to intentionally exaggerate or minimize symptoms. Her insight seem questionable. Her speech was not spontaneous but adequately productive and organized, and her memory and thinking seem to be alright. Claimant's diagnosis was panic disorder with agoraphobic features, major depression, recurrent, moderate severity, history of PTSD with residual features, moderately severe psychosocial stressors, and a GAF of 54. Claimant's prognosis is guarded for the short term and fair long term.

Claimant also provided a June 22, 2010 statement from her treating physicians saying that in their opinion she is disabled, that due to having no medical insurance additional medical problems that are suspected cannot be definitively ruled in or out, that she is not able to obtain or

hold any form of gainful employment, that GAF score is estimated at 40, and that her prognosis is poor.

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. These impairments have lasted for 12 months. Claimant has therefore met her burden of proof at Step 2, and analysis continues.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge concludes that the claimant does not have the ability to perform past relevant work. Claimant's past relevant work was as a reservation clerk at a camp ground, store clerk and a babysitter. Due to claimant's various physical and psychological problems documented by her medical record in addition to the credible hearing testimony about her condition, she would not be able to perform work. 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. Claimant would at best be able to perform sedentary work, and that is questionable due to her mental issues, PTSD, anxiety and depression. Under the Medical-Vocational Guidelines, a person closely approaching advanced age (claimant is 54 years old), with high school education and only unskilled work history (like the claimant), who can perform just sedentary work is disabled per rule 201.12.

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 does meet 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 determined that the claimant was not disabled for MA and SDA eligibility purposes.

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

1. Process claimant's disputed January 22, 2010 MA and SDA application (including any retro MA application claimant may have filed on this date), and grant the claimant any and all such MA and SDA benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant in writing of this decision.
3. Review claimant's ongoing medical eligibility in November, 2011, at which time updated medical records are to be obtained.
4. Advise the claimant she must follow all prescribed medical and psychological treatment, as failure to do so may result in future termination of benefits.

SO ORDERED.

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

Date Signed: November 3, 2010

Date Mailed: November 4, 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

cc:

