

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 2010-37789
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 7, 2010
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Clinton Township, Michigan on Wednesday, July 7, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

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

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on March 11, 2010.
2. On April 28, 2010, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On April 5, 2010, the Department sent a Notice of Case Action to the Claimant informing her that she was found not disabled. (Exhibit 2)

4. On May 25, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 3)
5. On June 15, 2010, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 4)
6. The Claimant's alleged physical disabling impairment(s) are due glaucoma, cataracts, myocardial infarction, congestive heart failure, renal failure, diabetes mellitus, incontinence, headaches, fatigue, and dizziness.
7. The Claimant's alleged mental impairment(s) are due to depression.
8. At the time of hearing, the Claimant was 56 years old with a [REDACTED] birth date; was 5'5" in height; and weighed 170 pounds.
9. The Claimant is a college graduate with an employment history as a nurse.
10. The Claimant currently works an average of 15 hours a week earning \$28.00 an hour as a nurse on a bus with medically fragile children.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual Glossary ("BRM").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

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

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

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b) Generally, in evaluating work activity for substantial activity purposes, a primary consideration is the earnings derived from the work activity. 20 CFR 416.974(a)(1) The monthly substantial gainful activity level for non-blind individuals for 2010 is \$1,000.00/month.

In this case, in addition to the Claimant's previous duties as a nurse at a hospital, the Claimant began working with medically fragile children in [REDACTED]. Although the Claimant has reduced her hours, she currently works 3 hours a day, five days a week, earning \$28.00/hour. The medical evidence shows that the Claimant was hospitalized from [REDACTED] through [REDACTED] [REDACTED] through [REDACTED]; and [REDACTED] through [REDACTED] of this year. In determining the Claimant's earnings from [REDACTED] through [REDACTED], it was presumed that the Claimant did not derive any earnings during the almost 5 weeks of hospitalization previously noted. In doing so, the

Claimant's average monthly gross earnings for those months (February through June) are \$1,260.00 which is beyond the substantial gainful activity level. In light of the foregoing, it is found that the Claimant is working and the work is a substantial gainful activity thus she is found not disabled at Step 1 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program.

It is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

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

Date Signed: 07/08/2010

Date Mailed: 07/08/2010

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.

CMM/jlg

cc:

