STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No: 2011-39089
Issue No: 2009
Case No: [redacted]
Hearing Date:
October 4, 2011
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 1, 2011. Claimant, represented by [redacted] personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 16, 2011, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA benefit programs?

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 December 20, 2010, Claimant filed an application for MA and Retro-MA benefits alleging disability.

(2) On March 9, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-severe impairment, which lacked duration of 12 months pursuant to 20 CFR 416.909.

(3) On March 15, 2011, the department caseworker sent Claimant notice that her application was denied.

(4) On June 14, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On July 19, 2011 and December 16, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, page 1; Department Exhibit C, page 1).

(6) Claimant has a history of back problems, degenerative disc disease, osteoporosis, palpitations, atrial myxoma removal, pulmonary pretension, systemic hypertension, bilateral carotid artery disease and bronchitis.

(7) On December 14, 2010, Claimant underwent an endoscopic retrograde cholangiopancreatograph, status post deep and biliary cannulation with 0.035 inch Hydra Jagwire and Autotome RX39. Successful major papilla, medium sized sphincterotomy without complications. Status post balloon occlusion cholangiogram. Successful biliary balloon sweep times three revealing clear bile without sludge, stones or pus. Severely and diffusely dilated common bile duct with normal appearing intrahepatic duct and cystic duct stump. No biliary filling defects, extrinsic compression, mass or abrupt cutoff were noted. These findings most likely correspond to ampullary stenosis. (Claimant Exhibit A, pages 1-7).

(8) On December 21, 2010, Claimant consulted with her cardiologist regarding her abnormal CT scan of her chest. It suggested a mass in the left atrium, most likely a myxoma measuring 5.7 cm. She has some lower extremity edema and a herniated disc in her lower back. Her EKG reveals sinus rhythm with left atrial abnormality. Chest pain suspected musculoskeletal. She was asked to cut down on her caffeine intake and begin weaning herself off cigarettes immediately. She was scheduled for a transesophageal echocardiogram and a heart catheterization, right and left and coronaries to prepare her for surgery. (Department Exhibit A, pages 53-56).

(9) On December 22, 2010, a pulmonary consultation was conducted on Claimant who was hospitalized for elective heart surgery and an abnormal x-ray report. She had too many pulmonary nodules and microcalcifications to count. She was diagnosed with a left atrial myxoma. Due to her abnormal liver function tests, a GI was consulted for further evaluation and suitability for cardiac surgery. Based on her history of gallstone pancreatitis, fluctuating liver enzymes and abnormal liver function tests and a dilated bile duct, there is a possibility of ampullary stricture which may be a result of previous pancreatitis. Clinically, she

does not have any features of chronic liver function tests and biochemically, no features suggestive of any impaired synthetic functions of the liver. Monitoring of her liver function tests for the next two days was suggested and if they remained stable, surgery could proceed as scheduled. (Claimant Exhibit A, pages 13-15, 20-23).

(10) On December 27, 2010, Claimant had a borderline ECG with a possible left atrial enlargement. The transesophageal echocardiogram (TEE), showed a large, very heterogeneous mass involving greater than two-thirds of the left atrium, intermittently occluding the mitral orifice and attached to the fossa ovalis of the atrial septum. TEE images done after excisior of the left atrial mass: The left atrium is of normal size and the intra-atrial septum is intact. There is minimal color flow abnormality on the left side of the intra-atrial septum, presumably due to pulmonary vein inflow. Clear left atrium following resection of the left atrial mass. (Department Exhibit A, pages 49-52).

(11) On December 31, 2010, Claimant was discharged with diagnoses of left atrial myxoma, hypertension, postoperative acute blood loss anemia and postoperative thrombocytopenia. She was admitted to the hospital on 12/22/10. The echocardiogram workup confirmed the myxomatous mass. On 12/27/10 an excision of the left atrial mass was performed. She was ambulating and tolerating a regular diet on 12/31/10 but still dependent on oxygen. She was discharged with some oxygen to maintain decent oxygen saturation. (Claimant Exhibit A, pages 11-12, 16-19).

(12) On January 5, 2011, Claimant saw her doctor for follow-up after open heart surgery. The myxoma was removed and she reported pain at the surgical site and depression over how long it was taking to heal. Here doctor noted during the medical examination for the department, that Claimant was still suffering pain at the incision site and was unable to meet her needs at home because she needed assistance with laundry, shopping, cooking, cleaning and bathing. (Department Exhibit A, pages 69-72; Claimant Exhibit A, pages 35-36).

(13) On January 17, 2011, Claimant followed up with her cardiologist for her first postoperative visit since the excision of the mass on 12/27/10. She stated that she is still having some significant incisional pain mostly up in the shoulders and collar bone area and is taking Vicodin as well as the methadone she was on prior to surgery. She has some mild shortness of breath and dyspnea on exertion, and she also noticed some lower extremity edema. Her chest is clear to auscultation bilaterally. Her cardiac exam is regular rate and rhythm without significant murmur. Her sternal incision is healing well and the sternum is stable to palpation. Here lower extremities show moderate edema bilaterally. (Department Exhibit A, page 48).

(14) On January 31, 2011, Claimant saw her doctor for follow-up after her heart surgery. Claimant stated the chest pain from surgery was getting better. (Department Exhibit A, pages 67-68).

(15) On February 2, 2011, Claimant was examined by an internist on behalf of the department. Claimant has a history of lumbago, hypertension and depression. She complained of depression and nausea following heart surgery. The doctor noted she was currently stable and able to meet her needs at home. (Department Exhibit A, pages 46-47).

(16) On February 7, 2011, Claimant was examined by her cardiac surgeon on behalf of the department. On December 27, 2010, Claimant had a resection of her left atrium, requiring the removal of a myxoma. The cardiologist noted Claimant was stable at this time and able to meet her needs in the home. (Department Exhibit A, pages 57-58).

(17) On February 14, 2011, Claimant saw her doctor for follow-up on her recent cardiovascular surgery. She is no longer coughing, however she still does have some lower extremity edema. She is still having some swelling despite the removal of the myxoma. She still has symptoms of sleep apnea and continues to smoke. She had an abnormal ECG with normal sinus rhythm. (Claimant Exhibit A, pages 26-31).

(18) On April 1, 2011, Claimant was seen by her cardiologist for a follow-up visit after an atrial mass removal and post cardiac catheter. She quit smoking a month ago, and is frequently tired and wakes up with a headache in the morning. She has lost 6 pounds since her last visit and has occasional palpitations and severe low back pain for which she is on medications. Her carotid ultrasound back in December showed a 50-70% lesion in the left and a 60-75% lesion in the right. (Department Exhibit A, pages 64-66).

(19) On April 21, 2011, Claimant was evaluated by her physician on behalf of the department. Her physician noted she was complaining of back pain and suffered from lumbosacral disc degeneration, depression and hypertension. Her physician noted she walks with a limp and needs assistance with housework and laundry. (Claimant Exhibit A, pages 36-37).

(20) At the time of the hearing, Claimant was 47 years old with a [redacted] birth date; was 5'3" in height and weighed 147 pounds.

(21) Claimant is a high school graduate. Her work history includes working as a maid for two years and being a stay at home mom.

(22) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

Under the Medicaid (MA) program:

> "Disability" is:
>
> ...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.

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 applicant 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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

> In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a).
>
> Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).
>
> In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about

> how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).
>
> Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3).
>
> Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).
>
> We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3).
>
> Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the ongoing pain and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

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

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant has not been employed since 1999; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical limitations upon her ability to perform basic work activities.

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.

In the third step of the sequential consideration of a disability claim, 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 Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings that Claimant cannot return to her past relevant work because the rigors of working as a maid are completely outside the scope of her physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her December 20, 2010 MA/Retro-MA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's December 20, 2010 MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in January 2014, unless her Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 1/10/12

Date Mailed: 1/10/12

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.

VLA/ds