

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

IN THE MATTER OF:



Reg. No: 201145084
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: November 9, 2011
Montcalm County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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 9, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-Medicaid?

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 May 19, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On July 1, 2011, the Medical Review Team (MRT) denied Claimant's application for MA stating Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied Claimant's MA application based on insufficient evidence that Claimant had a severe impairment preventing her from employment for at least 12 months. (Department Exhibit 2, pp. 1-2).
- (3) On July 11, 2011, the Department sent Claimant notice that her application was denied. (Department Exhibit 1, pp 1-3).
- (4) On July 19, 2011, Claimant filed a request for a hearing to contest the Department's negative action.

- (5) On August 29, 2011, the State Hearing Review Team (SHRT) again denied Claimant's application stating Claimant retains the residual functional capacity to perform medium unskilled work.
- (6) Claimant alleges she suffers from depression, chronic obstructive pulmonary disease (COPD) and asthma.
- (7) From May 1979 through March 2006, the Claimant worked as an assembler/operator for a refrigeration business. (Department Exhibit 4, pp. 13-15).
- (8) On February 21, 2009, Claimant's radiology report indicated findings of chronic obstructive pulmonary disease without active pulmonary or parenchyma disease confirmed; increase in thoracic kyphosis and degenerative and osteopenic changes. There were no findings of pneumothorax or pleural effusions. (Department Exhibit 2, p. 17).
- (9) On April 27, 2009, Claimant's radiology report indicated findings of degenerative changes with the *Hallux Valgus* and *Osteopenia*. There were no findings of acute fractures or dislocations. (Department Exhibit 2, p. 18).
- (10) On February 9, 2011, [REDACTED] saw the Claimant for an initial diagnostic review. Upon completion of the review, [REDACTED] diagnosed the Claimant with Major Depression with some symptoms of Post Traumatic Stress Disorder (PTSD). [REDACTED] primary diagnosis of the Claimant was 296.33 with a Global Assessment of Function (GAF) of 50. (Department Exhibit 4, page 5-12).
- (11) On April 19, 2011, Wanda Myers NP, evaluated the Claimant based on the Claimant's complaints of *Lymphadenopathy*, sore throat and sinus issues. [REDACTED] found the Claimant to be alert and oriented X 3 with no impairment of recent or remote memory. [REDACTED] provided the Claimant with a prescription for Penicillin V Potassium to treat the Claimant's sinusitis. (Department Exhibit A, page 46).
- (12) On June 3, 2011, the Claimant saw [REDACTED] to have the DHS-49 (Medical Examination Report) filled out. On June 3, 2011, Ms. Myers found the Claimant to be alert and oriented X 3 with no impairment of recent or remote memory. [REDACTED] examined the Claimant's feet and found no swelling, edema or erythema of the surrounding tissue with normal strength and tone. [REDACTED] did find the Claimant had pain in the plantar aspect of her right and left feet. [REDACTED] found the Claimant's allergies to be stable through the use of over the counter (OTC) antihistamines and noted the Claimant's anxiety was stable. (Department Exhibit 4, pp. 1, 2; Department Exhibit 2 p. 16.).

- (13) On May 29, 2011, Claimant completed the DHS-49G (Activities of Daily Living) form. The Claimant indicated on the form she fixes her own meals, grocery shops, does the housework and partially takes care of the lawn and snow removal (in winter). (Department Exhibit 2, pp. 22-24).
- (14) As a hobby the Claimant paints large wall murals. The Claimant's most recent wall mural was painted in March 2011. The painting of the wall murals sometimes requires the use of a ladder.
- (15) Claimant is a 55 year old woman whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 165 lbs. Claimant completed high school and has a certificate in Business Management from [REDACTED]. Claimant states that she last worked on March 3, 2006.
- (16) Claimant has applied for Social Security disability and has been denied. At the time of the hearing, the Claimant was in the appeal process.

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 Reference Tables 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, I find the Claimant is not engaged in substantial gainful activity as she testified she has not worked since March 3, 2006. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, I find the medical records and the Claimant's testimony at the hearing established the existence of Chronic Obstructive Pulmonary Disease, degenerative changes to the *Hallux Valgas* and Major Depression. I find the Claimant's impairments are "severe" within the meaning of the Regulations, because they significantly limit the Claimant's ability to perform basic work activities.

At Step 3, I find 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, I find the objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12

months or more and prevent her from performing the duties required from her past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

Although I have found the Claimant disqualified from receiving disability at both Steps 3 and 4, I will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

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 *Dictionary of Occupational Titles*, published by the Department of Labor. 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).

At Step 5, I find the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least medium work duties. The record indicates the Claimant stopped working due to a business related layoff, rather than the alleged impairments. In addition, the Claimant has described daily activities which are not limited to the extent one would expect, given the complaints of disabling symptoms and limitations. The medical documentation and testimony reflect the Claimant is able to take care of her own basic living needs (cleaning, cooking, showering) as well as the general operational tasks of being a landlord with both commercial and residential tenants. Furthermore, the Claimant acknowledged she babysits her grand children and paints wall murals in her free time.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that 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). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance.

DECISION AND ORDER

I find, based upon the above findings of fact and conclusions of law, decide 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.

Accordingly, the department's decision is **AFFIRMED**.

It is SO ORDERED.

/s/ _____
Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 30, 2011

Date Mailed: December 1, 2011

2011-45084/CAA

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.

CAA/cr

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