

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

IN THE MATTER OF:



Reg. No: 2011-46631
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
November 15, 2011
Owosso 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, an in-person hearing was held on November 15, 2011. Claimant 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 January 4, 2012, 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?

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 6, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On July 21, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-severe and non-exertional impairment and was capable of performing other work, pursuant to 20 CFR 416.920(f).
- (3) On July 25, 2011, the department caseworker sent Claimant notice that her application was denied.

- (4) On July 27, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 15, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the ability to perform a wide range of light work. (Department Exhibit B, pp 1-2).
- (6) On January 4, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform her past relevant work as a medical assistant. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of multiple sclerosis, hypothyroidism, fibromyalgia, migraines, hypertension, diabetes, and sleep apnea.
- (8) On November 17, 2010, the Cerebrovascular Duplex showed no evidence of significant arterial occlusive disease in the internal carotid arteries. No significant stenosis in the external carotid arteries bilaterally. Antegrade flow in both vertebral arteries. (Department Exhibit A, p 40).
- (9) On March 8, 2011, Claimant's lab results showed she had high cholesterol of 209 and Triglycerides of 192. Her Glucose level was 113. (Department Exhibit A, p 28).
- (10) On March 30, 2011, Claimant saw her doctor for head, neck, and eye pain. Also her hearing was going in and out and she had tingling in her left leg. An MRI was ordered. (Department Exhibit A, p 20).
- (11) On May 9, 2011, Claimant saw her neurologist who reviewed the MRI of her brain and pituitary gland which showed white matter changes and a nonhomogenous enhancement in the pituitary with no mass lesion. Her neurological examination revealed decreased memory, headaches, vertigo and visual changes. Her cerebellar examination showed finger-nose-finger inappropriate, rapid altering movements not appropriate, and heel-to-shin not appropriate. Her doctor found that she had a several year history of atypical neurologic deficits that have been relapsing and remitting; clinically her history was highly suspicious for some type of autoimmune process affecting her central nervous system. Her doctor indicated his concern that she may have underlying lupus or sarcoidosis and that multiple sclerosis was also a plausible possibility given her concomitant fatigue, memory changes, and numbness. (Department Exhibit A, pp 51-53).
- (12) On May 31, 2011, Claimant's MRI of her head showed mild deep white matter and subcortical white matter changes, appearance nonspecific. Findings can be seen with history of migraines, small vessel disease, or a demyelinating etiology. There was no focal abnormal enhancing mass

lesion present and no evidence of an acute stroke. (Department Exhibit A, pp 60-61).

- (13) On June 1, 2011, Claimant was given an MRI of the cervical, thoracic and lumbar spine to rule out autoimmune process versus multiple sclerosis. The MRI showed no evidence of focal signal abnormality or abnormal enhancement in the spinal cord. Also, no evidence of spinal canal stenosis or disc herniation. (Department Exhibit A, pp 58-59).
- (14) On June 14, 2011, Claimant's physician completed a medical source statement concerning the nature and severity of her physical impairment. Her physician noted Claimant sees her for treatment twice a month. She was currently diagnosed with edema, hypertension, asthma, pituitary tumor, and multiple sclerosis. Her primary symptoms were fatigue, headache, memory loss, numbness, and low back pain. The physician noted that medication did not completely relieve the pain without acceptable side effects. Her physician indicated Claimant was capable of sitting, standing/walking 0-2 hours a day. Claimant was noted to have significant limitations in doing repetitive reaching, handling, fingering or lifting due to numbness. Her physician noted that at the time of completion of the medical source statement, Claimant was not required to use a cane, but this would change as the multiple sclerosis progressed. Claimant's impairments were noted to have lasted or were expected to last at least 12 months, and her condition interfered with her ability to keep to keep her neck in a constant position and she was unable to do a full time competitive job that required her to keep her neck in a constant position on a sustained basis. Her physician also indicated that Claimant's psychological limitations, limited vision, inability to stoop, push, pull or bend would affect Claimant's ability to work at a regular job on a sustained basis as multiple sclerosis causes muscle wasting. The physician noted that Claimant could not sit continuously in a work setting, and limited Claimant to lifting no more than 10 pounds. Claimant was noted to be unable to tolerate low stress in a work environment and would be absent more than 3 times per month. (Department Exhibit A, pp 45-47).
- (15) On June 29, 2011, Claimant saw her doctor for follow-up on the MRI/lumbar puncture. Based on the imaging study, her doctor found that Claimant had relapsing remitting multiple sclerosis, although the possibility that an underlying inflammatory disorder was her true diagnosis. Her doctor started her on disease modifying treatment for multiple sclerosis on Avonex. (Department Exhibit A, pp 48-50).
- (16) On July 12, 2011, Claimant underwent a medical examination on behalf of the department. Current diagnoses: multiple sclerosis, vertigo, hypothyroidism, depression, hypertension, edema, and high cholesterol.

The doctor's numerous notes throughout the examination were undecipherable. At the completion of the examination, the physician noted Claimant's condition was deteriorating. (Department Exhibit A, pp 8-12).

- (17) On September 9, 2011, Claimant visited the Outpatient Rheumatology Clinic for consultation regarding possible systemic lupus erythematosus. Based on the examination, the physician found that Claimant had a longstanding history of chronic pain disorder with a recent diagnosis of multiple sclerosis based on an abnormal spinal tap with not so abnormal brain MRI. He saw no evidence that she had systemic lupus erythematosus, but believed she should be checked for rheumatoid arthritis. (Claimant Exhibit A, pp 1-3).
- (18) On September 24, 2011, Claimant went to the emergency department complaining of shortness of breath, palpitations, and reported a recent diagnosis of multiple sclerosis. Labs and an EKG were ordered. Discharge diagnosis was multiple sclerosis. (Claimant Exhibit A, pp 12-15).
- (19) On October 21, 2011, Claimant was evaluated in the Sleep Disorder Clinic. She had an Epworth sleepiness scale of 15 during the clinic visit. Based on these symptoms, she had a baseline polysomnogram done on 9/19/11, which showed apnea-hypopnea index of 30.1, which was worse during REM to 40.1. Her episodes were worse during supine REM sleep. She had a minimum saturation of 84% and periodic limb movements were noted. A CPC titration study was recommended. (Claimant Exhibit A, pp 16-18).
- (20) On October 23, 2011, Claimant underwent a CPAP Trial. The titration polysomnogram tested CPAP of 4-14cm of water with Cflex 3. CPAP of 14cm of water with Cflex of 3 adequately controlled her sleep-disordered breathing, though mild flow limitation persisted. No REM sleep was observed during the study. If she remains symptomatic with use of CPAP of 14cm of water and positional therapy (avoidance of supine sleep), a retitration study with encouragement of supine sleep starting at CPAP of 15cm of water should be pursued. Frequent periodic limb movements during sleep were observed. (Claimant Exhibit A, pp 4-6).
- (21) On November 9, 2011, Claimant underwent a psychological evaluation on behalf of the department by the Disability Determination Service. She indicated that her stepfather molested her from the ages of 3 to 18. She began crying when discussing the abuse. She said that her mother knew about the abuse but did nothing to stop it. She reported intrusive images and nightmares related to the abuse. She reported hypervigilance and disturbed sleep. She reported avoidance of stimuli that remind her of the

abuse. She appeared depressed. Her responses to the Beck Depression inventory showed evidence of mild to moderate depression characterized by a mildly depressed mood, discouragement about the future, mild guilt, crying, mild irritability, a mild loss of interest in other people, reduced self-esteem, mild sleep disturbance and fatigue. The results of the evaluation did not show strong evidence of any kind of cognitive disorder. She generally demonstrated average intellectual and academic skills. She appeared to have unimpaired capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks. Given that she was fired earlier this year, apparently due to forgetfulness, she appears to have at least mild to moderate impairment carrying out complex tasks. She appeared to have mild impairment in her capability to interact appropriately and effectively with co-workers and her supervisors, and to adapt to changes in the work setting. It was suspected that her psychological condition would result in mild to moderate impairment in her capacity to do work-related activities. Prognosis was fair. Axis I: Posttraumatic Stress Disorder, Mood Disorder, secondary to numerous medical problems; GAF: 59. (Department Exhibit C, pp 3-11).

- (22) Claimant is a 48 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 246 lbs. Claimant completed her GED.
- (23) Claimant had applied for 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 not 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 April 2011; 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 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. 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 medical assistant 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 your 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 May 6, 2011 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 May 6, 2011 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: 1/30/12

Date Mailed: 1/30/12

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

■ [REDACTED]