

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201146643
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 18, 2012
County: Ottawa 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 January 18, 2012. Claimant, represented by [REDACTED] of [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 April 20, 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 December 27, 2010, Claimant filed an application for MA and Retro-MA benefits alleging disability.
2. On April 25, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant's physical impairment lacked 12 months of duration.
3. On April 29, 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 5, 2011, the State Hearing Review Team (SHRT) again denied Claimant's application based on her vocational profile (Claimant approaching advanced age, 10th grade education, and semi-skilled work history), using Medical-Vocational Grid Rule 202.14.
6. Claimant has a history of degenerative joint disease (DJD), arthritis, respiratory failure, hypertension, renal failure, diabetes, seizure, depression, anxiety, neuropathy, gout, gastroesophageal reflux disease (GERD), and polysubstance abuse.
7. On December 7, 2010, Claimant was admitted to the hospital for a probable seizure. Claimant has a history of alcoholism. Over the last several days she has developed nausea and vomiting. This has made it difficult for her to maintain her daily alcohol consumption. She last had a drink a little over 24 hours ago because of her nausea and vomiting. Earlier today she began to experience paresthesia in both of her feet. Later she began to develop tremulousness and agitation. Because of anxiety, she called 911 and an ambulance arrived at her home. There is an interval between the time that she called 911 and the ambulance arrived for which she is completely amnesic. She is uncertain as to whether she fell. No one was there to witness any event. She has had severe muscle aches ever since then, and also complains of a painful tongue. According to the ambulance personnel, she was agitated and combative. The agitation resolved with intravenous fluids and Ativan in the emergency department. She stopped using alcohol on her own about 13 years ago. She went through withdrawal without assistance and was sober for 1-2 years. She then returned to drinking a little over 10 years ago. She has no past history of medically treated withdrawal symptoms. She has no history of withdrawal seizures or other epilepsy. She has no history of childhood seizures. She has had some palpitations and severe tremor. She has profound contusions and blueness of her tongue bilaterally. She has mild to moderate edema in her extremities. She is hyperalert and agitated, but cooperative. She has a severe positional tremor in both of her outstretched upper extremities. A CAT scan of the head in the emergency department was interpreted as demonstrating no abnormality. Chest x-rays shows no acute cardiopulmonary process. Chest CTA shows no acute abnormalities; no pulmonary emboli, thoracic aortic aneurysm or dissection, pneumonia, or congestive heart failure. Abdominal and pelvic CAT scan shows fatty infiltration of the liver, chronically scarred kidneys, and uncomplicated sigmoid diverticulosis. Assessment: (1) Alcoholism; (2) Alcoholic withdrawal; (3) Probable alcohol withdrawal seizure. On December 23, 2010, a psychiatric consult

was requested. Claimant was admitted to the intensive care service with a fairly complex array of medical issues, including history of recent aspiration pneumonia with hypercapnic and hypoxic respiratory failure (currently ventilator dependent) with difficulty weaning. She also has a history of alcohol dependence, with recent delirium tremens, and is on a stepdown Ativan taper for this, in addition to hypertension, hypomagnesemia, and a urinary tract infection. Claimant currently has a PICC line, and, as noted, is on the ventilator. There has been substantial difficulty weaning her, as she becomes notably agitated with attempts to wean. As she currently has a tracheostomy, communication is difficult, however, she denies that she is having hallucinations or pain, and she does not appear to be attending to internal stimuli. She also denies that she is suicidal. She denies pain or hallucinations. Affect does appear anxious and she does not indicate that she is getting substantial relief when she is given the Ativan. She does appear alert and oriented to situation; however, is unable to comply with formal cognitive testing. Insight and judgment are limited. Assessment/Recommendations: (1) Anxiety, secondary to general medical condition; (2) Alcohol dependence. This has likely now been replaced with benzodiazepine dependence and gradual weaning with close monitoring of vital signs will be necessary. Behavioral Health will follow during this admission. Claimant was discharged in stable condition on January 8, 2011, to a nursing home after her PEG and tracheostomy were removed to complete 10 more days of oral Keflex. She was advised to quit drinking alcohol. Final Diagnoses: Methicillin sensitive Staphylococcus aureus pneumonia; Severe sepsis; Acute hypercapnic/hypoxemic respiratory failure; Acute alcohol withdrawal with delirium tremens; Acute kidney injury; Hyponatremia; Severe protein caloric malnutrition; Hypomagnesemia; Hypokalemia; Hypophosphatemia; Hypertension; Obesity; Anemia of chronic disease; Pneumoperitoneum; Urinary tract infection-pseudomonas, presumed catheter related; Severe deconditioning. (Department Exhibit A, pp 31-50).

8. On March 25, 2011, Claimant was admitted to the hospital for hyperkalemia and renal impairment. BUN/Cr 50/2.3. Potassium 6.3. She responded well to IV fluids. Due to institutionalization, she has been free of alcohol use. During the hospital stay she was noted to have mild anemia. Associated with this was a mild/moderate thrombocytosis. Etiology remains unclear. Urology was consulted. They did not feel the solitary stone was the source of her renal dysfunction. Calculi in the lower pole of the left kidney. No hydronephrosis. Left kidney is smaller than the right. There is a focal area of volume loss in the superior pole of the right kidney. Discharge diagnosis: (1) Hyperkalemia, resolved; (2) Acute renal failure, multifactorial, resolved; (3) Nephrolithiasis. Left kidney. Nonobstructing; (4) Hypertension; (5) History of alcoholism; (6) Mild anemia; (7) Hyperuricemia; (8) Hypomagnesemia; (9) Mild

thrombocytosis. Claimant was discharged on March 28, 2011, with instructions to follow-up with her primary care physician. (Claimant Exhibit A, pp 1-3).

9. On June 8, 2011, the State of Michigan performed a psychological Disability Determination based only on information provided by Claimant. Diagnoses: Axis I: Alcohol abuse in short-term remission, Depressive Disorder, Anxiety Disorder, History of drug abuse in remission; Axis III: Complaints of kidney failure and arthritis; Axis V: GAF=50-55. Prognosis: The potential for the Claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is fair. She appeared to have no difficulty understanding, remembering, or following through with simple instructions, and there appears to be no restrictions to her ability to perform simple, repetitive, concrete tasks. (Department Exhibit B, pp 3-7).
10. On November 16, 2011, Claimant saw her primary physician for a medication review. Claimant's hypertension was under control with current medication. Claimant complained of left knee pain that started a month ago with sudden intense pain and has been giving out on her. The left knee exam was positive for crepitations, extreme medial and lateral joint tenderness, fair range of motion, possible effusion present, possible bone enlargement. Right knee exam was positive for mild crepitations, no tenderness, full range of motion, no effusion present, no bone enlargement. Acute alcoholic intoxication in remission since 2/16/11. (Claimant Exhibit A, pp 4-7).
11. On December 12, 2011, Claimant was seen by her primary physician for follow-up of her left knee pain. The left knee pain is progressively worsening, especially over the past 2 months. She complains of increasing pain with occasional catching and buckling in the left knee. X-rays were obtained which revealed mild medial compartment degenerative changes. She does have some mild degenerative changes with spurring off the superior pole of the patella. She slightly favors the left knee with ambulation. She does have moderate to severe tenderness along the medial joint line, especially posteriorly. There is very minimal tenderness laterally. The more acute symptoms of catching and buckling may suggest that she has an underlying degenerative medial meniscus tear. Pending insurance and possible arthroscopic surgery, she received a corticosteroid injection. (Claimant Exhibit A, pp 11-15).
12. Claimant is a 50 year-old woman whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 156 lbs. Claimant completed the ninth grade and has a high school equivalent education.

13. 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 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, Claimant is not engaged in substantial gainful activity and testified that she has not worked since 2009. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering 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 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 Claimant's symptoms to determine the extent to which they limit 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.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with degenerative joint disease (DJD), arthritis, respiratory failure, hypertension, renal failure, diabetes, seizure, depression, anxiety, neuropathy, gout, gastroesophageal reflux disease (GERD), and polysubstance abuse. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter Claimant had degenerative joint disease and arthritis which would affect her ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

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 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, Claimant's past relevant employment has been as a home healthcare and childcare provider. The objective medical evidence of record is 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, this ALJ finds that Claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

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.

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 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 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 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 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, the burden of proof shifts to the department to establish that Claimant does have residual function 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. See discussion at Step 2 above.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light duties. Claimant alleges she suffers from pain in her knees and feet. However, Claimant testified during the hearing that she cooks her own meals, can walk half a block, stand for 15 minutes and sit for up to an hour and a half.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds Claimant meets statutory disability on the basis of Medical/Vocational Grid Rule 201.12 as a guide.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. If the remaining limitations would not be disabling, the substance abuse disorder is a contributing factor to the determination of disability. (20 CFR 404.1535 and 416.935). If so, the claimant is not disabled.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is not material to her alleged impairment and alleged disability because she is no longer using tobacco, drugs, or alcohol.

As a result, Claimant has 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). Claimant has cited medical problems and the clinical documentation submitted by Claimant is sufficient to establish a finding that Claimant is disabled. Accordingly, Claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect. Accordingly, the department's determination in this matter is **REVERSED**.

The department is ORDERED to make a determination if Claimant meets the non-medical criteria for MA and Retro-MA programs. If so, the department is ORDERED to open an MA and Retro-MA case from the date of application and issue supplemental benefits to Claimant.

Additionally, the local office shall initiate an MA review by May 2013, to determine Claimant's eligibility for continued MA benefits.

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

Date Signed: May 17, 2012

Date Mailed: May 17, 2012

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/cr

cc:

