

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

IN THE MATTER OF:



Reg. No.: 201147915
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: November 17, 2011
County: Genesee County DHS #6

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 the Claimant's request for a hearing. After due notice, a telephone hearing was held on November 17, 2011. The Claimant personally appeared and testified.

ISSUE

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

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 June 15, 2011, the Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
2. On July 20, 2011, the Medical Review Team (MRT) denied the Claimant's application for SDA stating Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied the Claimant's MA-P application based on insufficient evidence that the Claimant had a severe impairment preventing him from employment for at least 12 months. (Department Exhibit 1, pp. 16, 17).
3. On July 26, 2011, the Department sent the Claimant notice that his application was denied.

4. On August 8, 2011, the Claimant filed a request for a hearing to contest the Department's negative action.
5. On September 13, 2011, the State Hearing Review Team (SHRT) again denied the Claimant's SDA and MA-P application stating the Claimant's impairments do not meet/equal the intent or severity of a Social Security Listing and the Claimant retains the residual functional capacity to perform a wide range of unskilled, medium work. SHRT also indicated the nature and severity of the Claimant's impairments would not preclude work activity at the above-stated level for 90 days. (Department Exhibit 2, pp. 1, 2).
6. The Claimant alleges she is disabled due to diabetes, high blood pressure, severe abdominal pain, prolapsed uterus, prolapsed bladder and prolapsed rectum. (Department Exhibit 1, pp. 25, 26).
7. The Claimant is a 48 yea- old woman whose birth date is [REDACTED]. The Claimant is 5'1" tall and weighs 180 lbs. The Claimant's highest grade completed is 10th grade. The Claimant's employment history primarily consists of kitchen and food preparation. The Claimant's last employment was in September of 2010 as a cook. The Claimant's last position ended because she moved back to [REDACTED] and the position was not worth the drive.
8. On May 3, 2011, the Hurley Medical Center took an ultrasound of the Claimant's pelvis. The examination was limited due to an inadequately distended bladder and bowel gas. There was no adnexal mass identified and no free fluid found in the pelvis. The Claimant's uterus was unremarkable. (Department Exhibit 1, pp. 67, 68).
9. On May 3, 2011, the [REDACTED] took a CT scan of the Claimant's abdomen and pelvis. The scan did not reveal focal splenic lesions and showed the spleen, pancreas, adrenal glands, kidneys and gallbladder as unremarkable. The reviewing radiologist, [REDACTED] concluded there were no inflammatory changes but may be some fatty liver infiltration and a region in the uterus suggestive of a fibroid. (Department Exhibit 1, pp. 69, 70).
10. On May 4, 2011, the Claimant was admitted to [REDACTED] with complaints of abdominal pain, nausea and vomiting. Department Exhibit 1, pp. 34, 35. After an examination, [REDACTED] believed the Claimant suffered from acute diabetic ketoacidosis. The Claimant was admitted to the hospital and later released in stable condition. (Department Exhibit 1, p. 33, 37).
11. On May 5, 2011, the Hurley Medical Center took an X-Ray of the Claimant's chest. On May 5, 2011, [REDACTED] reviewed the Claimant's chest X-Ray. [REDACTED] did not see any infiltrates in the lungs and found the cardiovascular structures to be unremarkable. (Department Exhibit 1, p. 57, 58).

12. On June 20, 2011, [REDACTED] completed a Medical Examination Report on behalf of the Claimant. In the Report, [REDACTED] indicated the Claimant suffers from diabetes, has normal affect and mood, is improving and able to take care of her needs in the home without assistance. (Department Exhibit 1, pp. 20, 21).
13. On June 20, 2011, [REDACTED] completed a Medical Needs form on behalf of the Claimant. In the form, [REDACTED] indicated the Claimant suffers from diabetes mellitus but can take care of herself without assistance and is able to work at her usual occupation and at any job without limitations. (Department Exhibit 1, pp. 22, 23).
14. On July 11, 2011, a Department worker interviewed the Claimant and completed a Social Summary on behalf of the Claimant. The Department worker indicated the Claimant's only impairment was uncontrolled diabetes. (Department Exhibit 1, p. 18, 19).
15. 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

MA-P 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 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 uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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 are 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 (SGA). 20 CFR 404.1520(b) and 416.920(b). 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 SGA as she testified she has not worked since the September 2010. 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 diabetes. I do not find the Claimant's impairments are "severe" within the meaning of the regulations, because they do not 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 the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, the 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 the Claimant is prevented from performing the duties required from her past relevant employment. Accordingly, the Claimant is disqualified from receiving disability at Step 4.

Although I have found the Claimant disqualified from receiving disability at Steps 2, 3 and 4, I will continue to proceed through the sequential evaluation process to determine whether or not the 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 the Claimant is capable of performing at least medium work duties. The record indicates the Claimant stopped working by choice (drive, value). In addition, the medical records indicate the Claimant can participate in daily activities and work activities which are not limited to the extent one would expect, given the complaints of disabling symptoms and limitations. The medical documentation reflects the Claimant is able to take care of her own basic living needs (cleaning, cooking, showering).

The Claimant has not presented the required competent, material, and substantial evidence which would support a finding that the 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 the Claimant has cited medical problems, the clinical documentation submitted by the Claimant is not sufficient to establish a finding that she is disabled. There is no objective medical evidence to substantiate the Claimant's claim that the alleged impairment(s) is severe enough to reach the criteria and definition of disabled. Under the Medical-Vocational guidelines, an individual age 45-49 (the Claimant is 48 years of age), with less than a high school education (the Claimant stopped at grade 10) and an unskilled and semi-skilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.25. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance program.

BEM contains the following policy statements and instructions for caseworkers regarding the SDA program: "To receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older." BEM, Item 261, p. 1. Because the Claimant does not meet the definition of disabled under MA-P and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for SDA benefits either.

At the close of the hearing on November 17, 2011, I extended the record for an additional 90 days to provide the Claimant with the opportunity to provide additional medical documentation. As of January 30, 2012, I had received from the Department on the Claimant's behalf documentation related to appointment notices. The documentation submitted did not include any new or additional medical information relating to the Claimant's alleged disabilities. Therefore, I did not submit this documentation to SHRT for further review.

Accordingly, I find 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 the Claimant was not eligible to receive MA-P and/or SDA.

DECISION AND ORDER

I find, based upon the above findings of fact and conclusions of law, that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for MA-P and SDA.

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

It is SO ORDERED.

/s/

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

Date Signed: 1/30/12

Date Mailed: 1/31/12

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

201147915/CAA

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAA/cr

