

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

IN THE MATTER OF:



Reg. No: 2011-49036  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date:  
November 15, 2011  
Clinton 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.

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 November 18, 2010, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On April 21, 2011, the Medical Review Team (MRT) denied Claimant's application for MA and Retro-MA, stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f). (Department Exhibit A, pages 36-37).
- (3) On April 25, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On July 26, 2011, Claimant's representative filed a request for a hearing to contest the department's negative action.

- (5) On September 30, 2011, the State Hearing Review Team (SHRT) again denied Claimant's application stating Claimant retains the residual functional capacity to perform a wide range of simple unskilled work. (Department Exhibit B, pages 1-2).
- (6) Claimant has a history of depression, post traumatic stress disorder and anxiety.
- (7) On July 20, 2010, Claimant saw her doctor for an evaluation of her depression. Claimant was taking Prozac. Her doctor found she had depressive symptoms and suicidal ideation. It is noted the record is incomplete on this evaluation because only page 1 of 4 pages was submitted of this office visit. (Department Exhibit A, page 51).
- (8) On October 19, 2010, Claimant was admitted to [REDACTED] for chest pain. She had a history of a myocardial infarction in 1998. She had some cardiac testing a year ago, but nothing was found. Her chest discomfort was relieved by nitroglycerin. The chest discomfort happens at any time and is not related to exercise and can happen when she is just sitting still. She has a history of depression and anxiety and has been on Prozac for the past 2 or 3 years but she did not believe it was helping her. She has been very depressed and has thoughts of suicide. She feels that there is nothing left in life and that she wishes that her life would end. Impression: Chest pain, rule out myocardial infarction. History of coronary artery disease and myocardial infarction 12 years ago. Depression with suicidal ideation. Grief issues with death of husband. Elevated cholesterol. History of uterine cancer. Hypoxia. Probable COPD. History of C-section. Left shoulder, wrist surgery. Gallbladder surgery. Appendectomy. Tonsillectomy. Adenoidectomy. History of hyperlipidemia. A chest x-ray showed the cardiomeastinal silhouette was unremarkable. No infiltrates. (Department Exhibit A, pages 57-62, 68).
- (9) On October 20, 2010, Claimant denied any chest pain or shortness of breath. She thought nothing was wrong with her. She did not want to stay in the hospital and was ready to go home. She had depressive symptoms and suicidal thoughts, but no suicidal plans. The Dobutamine Portion of a Dobutamine Cardiolute showed a normal EKG response to IV dobutamine infusion. Correlation with Cardiolute images suggested. The Nuclear Imaging Report TCI Stress/Rest Sestamibi Pnl showed post-stress and rest myocardial perfusion imaging demonstrated no defects to suggest ischemia or infarction. Gated images demonstrated normal systolic contractibility with no regional wall motion abnormalities. Mild breast attenuation artifact was noted. Claimant was discharged. (Department Exhibit A, pages 63-67).

- (10) On November 1, 2010, Claimant saw her doctor for a follow-up after her admission to the hospital. Claimant was having chest pains and was admitted for tests due to her high blood pressure. A Dobutamine stress test was conducted and was found to be normal. As a result, her chest pain was attributed to anxiety and she was prescribed Wellbutrin and Lisinopril. Assessment: Anxiety and Depression. (Department Exhibit A, pages 47-50).
- (11) On February 8, 2011, Claimant saw her doctor for prescription refills. She reported she was not sleeping well. It was noted that she takes a lot of stimulants. She was on Prozac and Wellbutrin. She has been on addictive medications in the past and they did not work all that well for her. Claimant's current medications were adjusted, and a prescription for Desyrel was added. (Department Exhibit A, pages 44-46).
- (12) On March 22, 2011, Claimant underwent a comprehensive psychological evaluation at the request of the department. At the time of the evaluation, Claimant was taking Prozac, Wellbutrin, and Trazodone. Claimant stated she had constant suicidal thoughts and over the years had attempted suicide by means of overdose on three separate occasions. Throughout the evaluation, she expressed intense feelings of shame, diminished self-esteem, worthlessness, and self-loathing. She indicated she believed her children and grandchildren would be better off without her. She stated she was in a regular classroom program but repeated the first and seventh grades. When she was 19 she was in the twelfth grade and quit high school to get married. She completed her GED when she was 40. She stated she had high blood pressure and chest pain and her doctor had told her that she has no cardiac problems and the chest pain was from anxiety. She also has a weak bladder and was being medicated with Lisinopril and Oxybutynin. She indicated that over the years she worked in a number of different settings such as hospitals and adult foster care homes providing medical assistance to people. Her last job was working for Hospice in 2001. Test Results: She seemed to make a forthright effort during the evaluation. However, she appeared to be extremely anxious and depressed. The results of the Wechsler Adult Intelligence Scale-III (WAIS-IV), Verbal Comprehension Index (VCI), Perceptual Reasoning Index (PRI), Working Memory Index (WMI) and Processing Speed Index (PSI) showed she was functioning within the Borderline to Low Average range of intelligence. The results of the Wide Range Achievement Test showed she had Borderline academic skills, which were consistent with her cognitive abilities. She did not exhibit evidence of a learning disability; however, her academic skills were sufficiently low to suggest she would have difficulty in vocational settings in which academic skills were utilized. Throughout the evaluation, she exhibited a significant fine motor tremor and seemed to be extremely anxious throughout. She also reported posttraumatic stress symptoms such as flashbacks, recurring memories

and images regarding the sexual abuse she suffered and fear. There was no evidence of a thought disorder. She exhibited Borderline capabilities for social judgment and comprehension. The results of the evaluation showed evidence of severe anxiety, depression and posttraumatic stress. She exhibited intense levels of agitation, anxiety and depression at the time of the evaluation. She exhibited rather Diminished internal psychological coping mechanisms for being able to manage her emotional state in an effective way. Currently, she appeared to have Mildly Limited capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks. She appeared to have Severely Limited capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting. It was suspected that her multiple limitations would result in Moderately Severely Impaired capacity to do work-related activities. Diagnostic Impressions: Axis I: Generalized Anxiety Disorder, with Severe Social Isolation, Posttraumatic Stress Disorder; Axis II: Borderline Intellectual Functioning; Axis IV: Exhibited Moderately Severe psychosocial stressors associated with severe psychological turmoil and distress, social and interpersonal withdrawal and isolation, a very limited primary support system, and Borderline cognitive and academic capabilities. Axis V: Current GAF: 50. Prognosis: Very Guarded. Strongly recommended she seek outpatient psychological treatment in the immediate future. (Department Exhibit A, pages 39-43).

- (13) Claimant is a 62 year old woman whose birthday is [REDACTED]. Claimant is 4'11" tall and weighs 162 lbs. Claimant completed her GED.
- (14) Claimant was denied Social Security disability benefits and is appealing that determination.

#### 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, antalgic gait and other non-exertional symptoms he describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his 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 2005; 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 mental limitations upon Claimant's 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 mental findings, that Claimant cannot return to her past relevant work because the rigors of working as a nurses aid are completely outside the scope of her mental abilities given the medical evidence presented.

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

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the

claimant could perform despite his/her limitations.  
20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> 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 medical record and the Administrative Law Judge’s personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant’s 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). Based on Claimant’s vocational profile (advance age, Claimant is 62, has a 12<sup>th</sup> grade education and an unskilled work history), this Administrative Law Judge finds Claimant’s MA and Retro/MA is approved using Vocational Rule 201.04 as a guide. Consequently, the department’s denial of her November 18, 2010 MA/retro-MA application cannot be upheld.

**DECISION AND ORDER**

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

Accordingly, the department’s decision is REVERSED, and the department shall process Claimant’s November 18, 2010 MA/retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

It is SO ORDERED.

/s/

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

Date Signed: 11/22/11

Date Mailed: 11/22/11



**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]