

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

Oakland County-04

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon Claimant's request for a hearing. After due notice, an in person hearing was held on June 9, 2011. The Claimant appeared and testified. Claimant's Authorized Hearings Representative [REDACTED] through [REDACTED] also appeared. [REDACTED] FIM appeared on behalf of the Department.

ISSUE

Was the Department correct in denying Claimant's MA application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA-P on July 28, 2010.
2. The Medical Review Team denied the applications on September 24, 2010.
3. Claimant filed a request for hearing on February 20, 2011 the MA denial.
4. A hearing was held on June 9, 2011.
5. On March 22, 2011 the State Hearing Review Team denied the application because Claimant retains the capacity to perform light work avoiding frequent overhead reaching.
6. Claimant is 5'3" tall and weighs 150 pounds.

7. Claimant is [REDACTED] of age.
8. Claimant's impairments have been medically diagnosed as hypertension, rotator cuff tear, arthritis and depression.
9. Claimant's physical symptoms are limited range of motion, tingling, numbness, pain.
10. Claimant takes the following prescriptions:
 - a. Lisinpril
 - b. Xanax
11. Claimant completed the 10th grade.
12. Claimant is able to read, write, and perform basic math skills.
13. Claimant last worked as a day care worker and previously worked as a housekeeper, a factory worker and a dishwasher.
14. Claimant testified to the following physical limitations:
 - i. Sitting: 30 minutes
 - ii. Standing: 15-20 minutes
 - iii. Walking: 1 block
 - iv. Bend/stoop: no limitation
 - v. Lifting: 10-15 lbs.
 - vi. Grip/grasp: no difficulty
15. Claimant lives with her brother.
16. Claimant testified that she does not perform household chores.

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 (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 Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 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 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 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 she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant was currently working at the time of the hearing. Therefore, the Claimant is disqualified from receipt of disability benefits under Step 1. Claimant at hearing requested MA coverage for a closed period between December 2009 and December 2010. Claimant argued at hearing that she met the disability requirements for this period of time.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a "severe impairment" 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples 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)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the Claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a Claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of ulcerative colitis, fatty liver disease. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting. Some testimony was taken at hearing regarding issues that Claimant has had with depression and anxiety. Claimant has never received treatment for her mental health issues. Claimant’s anxiety and depression do not rise to the level of a severe impairment.

The medical evidence has established that Claimant has physical limitations that could have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously or will last for more than twelve months. Because this is a de minimus test, it is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

In the third step of the sequential evaluation, we must determine if the claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either Claimant’s impairment is listed in this appendix, or it is not. However, at this step, a ruling against the Claimant does not direct a finding of “not disabled”; if the Claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the Claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Therefore, the Claimant cannot be found to be disabled at this step,

based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate Claimant's vocational factors.

In making this determination, the undersigned has considered the listings in Section 5.00 (Digestive System), specifically listing 5.06 for Inflammatory Bowel Disease.

None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the severity of the above listings. At most the medical evidence shows ulcerative colitis, fatty liver disease.

4. Past Relevant Work

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that :

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the Claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the Claimant's age, education and work experience and training will be made to determine if the Claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by

medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of “sedentary”, “light”, “medium”, “heavy”, and “very heavy” work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a Claimant can perform at her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the Claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the Claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the Claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the Claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a secretary. Secretarial work is considered light work. The Claimant's impairments would not prevent her from doing past relevant work.

In the current case, Claimant testified during her hearing that she retains the capacity to stand for 60 minutes, sit for 45 minutes, lift no weight, and walk approximately ½ block. This Administrative Law Judge finds Claimant's testimony with regard to the severity of her limitations less than credible. Claimant's medical records do not support the severity of the limitations testified to by the

Claimant. No physical residual capacity assessment by any physician that supports the severity of the limitation testified to by the Claimant is contained in the record.

Claimant received unemployment compensation throughout the period in question. Claimant acknowledged at hearing that she was actively seeking work and telling the unemployment compensation agency that she was ready willing and able to work, while receiving unemployment benefits. Telling the unemployment agency repeatedly that she is able to work and then testifying at hearing that she was unable to work, makes Claimant's testimony less than credible. In addition Claimant's hospital records at Exhibit A4 says that she uses "marijuana daily" and Claimant testified at hearing that she does not use illegal drugs, this again makes Claimant's testimony, specifically with regard to the severity of her limitations, less than credible. This Administrative Law Judge questions whether it was Claimant's medical condition or the difficult job market that prevented her from working. Claimant testified that she receives accommodations at her current employment and suggests that it may be less than competitive employment. The fact that Claimant is now back working gainfully and has been for several months contradicts this assertion.

Claimant was hospitalized in March 2010 for 8 days with an exacerbation of inflammatory bowel disease. It appears that Claimant's conditioned stabilized during her hospitalization and that she did not have any significant problems that required medical treatment until she was hospitalized again briefly in September 2010. One would have expected that medical conditions that would render Claimant as limited as she testified to at hearing would have had a more substantial and significant treatment history.

Claimant's Past Relevant Work includes work as a secretary. This job as typically performed and as described by the Claimant would be considered light work. Nothing in the medical records support a finding that Claimant's impairments preclude her from performing at the exertional level required for light work. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and clinical findings, that claimant is capable of the light work required by secretarial work. Claimant has not presented the required medical data and evidence necessary to support a finding that she is not, at this point, capable of performing such work. Therefore based on the medical records, the testimony presented at hearing and the observations at hearing, this Administrative Law Judge concludes that Claimant does retain the capacity to perform her past relevant work.

Accordingly, this Administrative Law Judge concludes that Claimant is not disabled for the purposes of the MA program. Claimant argued at hearing that she should be eligible for a closed period because she met the disability requirement for a 12 month period between December 2009 and December 2010. The medical evidence does not support a closed period as asserted by the Claimant. At best, the medical evidence shows possibly 7 months between March 2010 and September 2010 which clearly did not meet the 12 month

durational period especially in light of the fact that the Claimant was engaged in Substantial Gainful Activity in December 2010. Claimant's application would be denied on durational grounds in addition to her being able to perform her past relevant work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is not disabled for the purposes of the MA program. Therefore, the decisions to deny Claimant's application for MA-P was correct.

Accordingly, the Department's decision in the above stated matter is, hereby, UPHELD.



Aaron McClintic
Administrative Law Judge
for Maureen Corrigan, Director
Department of Human Services

Date Signed: 9/27/11

Date Mailed: 9/27/11

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 60 days of the filing of the original request.

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.

AM/ds

