

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

IN THE MATTER OF:



Reg. No.: 2012-14497
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: January 17, 2012
County: Mecosta

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, a telephone hearing was held on January 17, 2012. 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 April 16, 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), Retro-MA and State Disability Assistance benefit programs?

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 20, 2011, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On August 25, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that she was capable of past relevant work, pursuant to 20 CFR 416.920(E).

- (3) On August 30, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On November 13, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On December 19, 2011 and April 16, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-2; Department Exhibit C, pp 1-2).
- (6) Claimant has a history of type 1 diabetes mellitus uncontrolled, diabetic ketoacidosis, diverticulitis, psoriasis, hyperlipidemia, gastroesophageal reflux disease, hypertension, dyslipidemia, history of petit mal and grand mal seizures, depression, peripheral neuropathy, and gastroparesis, microalbuminuria.
- (7) On July 2, 2009, an EMG of both Claimant's legs was performed revealed electrophysiological evidence of left femoral neuropathy and evidence of mild distal neuropathy of the legs. (Department Exhibit A, pp 173-192).
- (8) On August 4, 2010, Claimant saw her neurologist for follow-up of her epilepsy, peripheral neuropathy, diabetes, and leg pain. Claimant's mother indicated Claimant continues to have petit mal seizures, especially around her menstrual period. Those spells are described as petit mal spells and absence seizure activities. Claimant also had a grand mal seizure once since her last visit. Claimant's mother indicated that the Ativan the neurologist had provided on a previous visit had been used and had been very successful in stopping the seizures, or preventing most of the grand mal seizures. Claimant was still on Depakote and Lamictal. Claimant also complained of some leg pain and swelling. She has diabetic neuropathy occurring in both legs. She also had an acute femoral neuropathy on the left leg. (Department Exhibit A, pp 141-143).
- (9) On September 23, 2010, Claimant was admitted to the hospital with severe diabetic ketoacidosis. She was tachycardic and looked ill. Chest x-rays showed clear lung fields bilaterally. Assessment: (1) Diabetic ketoacidosis; (2) Severe metabolic acidosis with increased anion gap secondary to diabetic ketoacidosis; (3) Type 1 diabetes mellitus – poorly controlled; (4) Acute kidney injury/dehydration; (5) Macrocytic anemia; (6) History of seizure disorder; (7) Upper respiratory tract infection. Suspect Claimant's diabetic ketoacidosis may have been triggered by upper respiratory tract infection. Claimant was discharged on 9/24/10 in stable condition. (Department Exhibit A, pp 1-10).
- (10) On March 25, 2011, Claimant saw her neurologist for a follow-up visit concerning her epilepsy, peripheral neuropathy, and leg pain. Her

seizures started when she was a child. She had a work-up in the Cleveland Clinic, and then she had a number of type of seizure activities including petit mal seizures and absence activities and intermittent grand mal seizures. In the past few years, Claimant has tried to work. However, sometimes she has a seizure at work and then she is let go. Claimant developed a sudden onset of left leg pain and left femoral nerve neuropathy likely related to the diabetes a little more than a year ago. Her weakness of the left leg has been dramatically improved but never to her normal strength. She complains of some pain below the knee and both legs. Claimant denies any significant memory problems. However, she still has left leg weakness, left leg pain, and continues to have some absence type seizure spells throughout the day. She continues to have some mild spells while she is on 2 seizure medications, Depakote and the Lamictal. Because of the continued activity, her neurologist also prescribed her Vimpat. (Department Exhibit A, pp 150-151).

- (11) On May 13, 2011, Claimant saw her primary physician for a recheck after her recent hospitalization for mild diabetic ketoacidosis. Claimant also complained of depression. (Department Exhibit A, pp 101-102).
- (12) On May 31, 2011, Claimant saw her physician complaining of vertigo, describing it as intermittent. Associated signs and symptoms include seizures. (Department Exhibit A, pp 99-100).
- (13) On June 9, 2011, Claimant was admitted to the intensive care unit of the hospital for poorly-controlled type 1 diabetes mellitus, with multiple previous admissions for diabetic ketoacidosis. She presented from the Mecosta County Medical Center with hyperglycemia. Her blood sugar was elevated at 641, bicarbonate less than 5. She was tachycardic, without murmur. Medial History: (1) Type 1 diabetes mellitus, diagnosed at age 10. She was last hospitalized May 6, 2011, at [REDACTED] for diabetic ketoacidosis. X-rays of Claimant's heart show the heart was not enlarged. Pulmonary vessels were not distended, and her lungs and pleural spaces were clear. EKG performed on admission showed ST depression in II, III, aVF, as well as leads V3 through V5. She had mildly decreased vibratory sensation distally in her lower extremities. The echocardiography reports showed the left ventricle size and thickness were normal. All wall segments contracted normally. The left ventricular ejection fraction was 65%. Normal diastolic function. There was trace tricuspid regurgitation. Impression: (1) Diabetic ketoacidosis; (2) Anion gap acidosis secondary to diabetic ketoacidosis; (3) Pseudo-hyponatremia; (4) Hyperkalemia; (5) Leukocytosis; (6) Elevated ALP; (7) Seizure Disorder; and (8) Medical non-compliance. Claimant was discharged on June 10, 2011, in stable condition. (Department Exhibit A, pp 19-41).

- (14) On June 22, 2011, Claimant saw her neurologist complaining of multiple spells she calls petit mal seizures. Claimant was on 2 seizure medications including Depakote and Lamictal. The examining physician started her on Vimpat which had caused one vertigo spell. Assessment: Epilepsy and the recurrent seizures and new onset of vertigo and peripheral neuropathy. Regarding her seizures, she will continue her current seizure medication including Depakote, Vimpat, and Lamictal. (Department Exhibit A, pp 156-158).
- (15) At the time of the hearing, Claimant was [REDACTED] old with an [REDACTED] birth date; was 5'6" in height and weighed 175 pounds.
- (16) Claimant is a high school graduate and has a limited work history.
- (17) Claimant was appealing the denial of 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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, seizures, and hospitalizations for diabetic ketoacidosis 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 2004; 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 cashier 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 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 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that 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 April 20, 2011, MA/Retro-MA and SDA 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 and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's April 20, 2011, MA/Retro-MA and SDA 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 May 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: 5/4/12

Date Mailed: 5/4/12

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

