

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

IN THE MATTER OF:



Reg. No.: 2012-15290
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 5, 2012
County: Lapeer County

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 April 5, 2012. 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 August 1, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On November 4, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-severe that lacked duration of 12 months, pursuant to 20 CFR 416.909.
- (3) On November 16, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On November 22, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 7, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B).
- (6) Claimant has a history of degenerative disc disease, bulging disc, severe chronic obstructive pulmonary disease (COPD), panic attacks, and anxiety.
- (7) Claimant is a [REDACTED] woman whose birthday is [REDACTED]. Claimant is 5'1" tall and weighs 110 lbs. Claimant completed high school and a year and a half of college.
- (8) Claimant had not applied for Social Security disability benefits at the time of the hearing, she testified because she "still wants to work."

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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").

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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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 limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since November 2011. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to degenerative disc disease, bulging disc, severe chronic obstructive pulmonary disease (COPD), panic attacks, and anxiety.

On August 31, 2007, Claimant had a CAT scan of her head due to trauma with blunt impact in the frontal area. The CAT scan of Claimant's head was negative.

On May 14, 2011, Claimant was treated for back pain. The musculoskeletal exam showed that her back pain was most likely caused by a strain of the muscles or ligaments that support the spine. Claimant had x-rays, the results of which were not provided. Claimant was instructed not to sit, drive or stand in on place for more than 30 minutes at a time, and to take short walks on level surfaces as soon as the pail allowed. She was also instructed to limit bending and lifting of no more than 20 pounds until she was completely better. She was prescribed a cortisone drug and released.

On September 14, 2011, Claimant underwent an internal medicine evaluation on behalf of the department. The examining physician noted that Claimant needs help from the state in the form of health insurance. Claimant is employable with some restrictions (no heavy lifting or extensive bending). Also the psychiatric issue should be evaluated by a psychiatrist before employment. Clinical impression: (1) Chronic back pain with history of degenerative disc disease "bulging disc disease;" (2) Consider bronchial asthma; and (3) Anxiety and panic attack.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). There is no objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment that has lasted or is expected to last at least 12 months, consecutively. While Claimant does appear to suffer from back problems, there is no evidence that her back problems are not being managed by prescriptions. Therefore, Claimant is denied at step 2 for lack of a non-severe impairment and no further analysis is required.

Claimant has not presented the required competent, material and substantial evidence which would support a finding that Claimant has a severe impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for 12 months in a row. 20 CFR 416.920(c); 20 CFR 404.1521. Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. Therefore, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 that Claimant was not eligible to receive Medical Assistance and Retroactive Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides 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 Medical Assistance and Retroactive Medical Assistance benefits. Claimant was not prevented from all types of work continuously for 12 months. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

/s/

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

Date Signed: 4/25/12

Date Mailed: 4/25/12

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

