

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201222560
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: February 16, 2012
DHS MA Spec Process

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 February 16, 2012. The claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) benefits?

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 September 7, 2011, claimant filed an application for Medical Assistance benefits alleging disability.
2. On December 2, 2011, the Medical Review Team denied claimant's application stating that the claimant's impairment lacks the 12 month durational requirement.
3. On December 21, 2011, the department caseworker sent claimant notice that her application was denied.
4. On January 6, 2012, the claimant filed a request for a hearing to contest the department's negative action.
5. On January 17, 2012, the State Hearing Review Team again denied claimant's application stating that the claimant does not have a severe impairment that limits her ability to perform basic work activities.

6. The record was left open following the hearing as the claimant produced new medical evidence subsequent to the hearing. After the new medical evidence was submitted, the State Hearing Review Team again denied the claimant's application on April 10, 2012 stating that the claimant retains the residual functional capacity to perform light work and therefore is not precluded from performing her past relevant work.
7. On June 15, 2011, the claimant was seen at the emergency department at St. John Health due to low back pain after a fall down the stairs. An x-ray of the lumbosacral spine was taken and showed no acute fracture or dislocation. The exam did reveal mild degenerative narrowing of the L4-L5 and L5-S1 disc spaces with some mild spurring at those levels. Mild degenerative changes were seen in the hips and the sacroiliac joints and paraspinal soft tissues were unremarkable. (Department Exhibit A pages 25-30).
8. On December 13, 2011, the claimant had a MRI of her lumbar spine preformed. Mild dextroconvexity of the lumbar spine was noted as well as loss of disc height at L4-L5 and L5-S1. The results showed that at L1-L2 there is a broad based central extrusion with mild superior and inferior migration causing moderate effacement of the thecal sac and mild relative canal narrowing. At L2-L3 there is mild disc bulge and facet arthropathy with mild relative canal narrowing and mild left neurofimal narrowing. The exam also showed mild disc bulge and facet arthropathy at L3-L4 and L4-L5. The L4-L5 disc bulge is causing abutment of the L4 nerve roots and mild right neural foraminal narrowing is present. At L5-S1 there is a moderate disc bulge present causing abutment of the L5 nerve roots. There was also mild bilateral neural foraminal narrowing present. (Department Exhibit D pages 14-15).
9. On December 13, 2011, the claimant also had a MRI of the cervical spine preformed. The results showed posterior disc and spur at C3-C4 causing abutment of the cord and mild canal stenosis. At C4-C5 posterior disc and spur cause effacement of the thecal sac and mild relative canal stenosis and uncovertebral hypertrophy causes moderate to severe bilateral neural foraminal narrowing. At C5-C6 posterior disc and spur cause effacement of the thecal sac and mild canal stenosis and uncovertebral hypertrophy causes severe bilateral neural foraminal narrowing. (Department Exhibit D page 16).
10. The claimant has complained on several occasions to her treating physician of neck pain, back pain, headaches, and pain radiating down her arms and legs. (Department Exhibit D pages 24-27).

11. Claimant is a 55 year-old woman, date of birth [REDACTED]. She stands 5'6" tall and weighs 140 lbs. She completed high school and obtained a diploma. She testified that she is attending classes at Macomb Community College but that she has not obtained a degree or certificate. The claimant has a past relevant work history consisting of light to medium semiskilled employment. The claimant is not currently working and has not worked since July 3, 2011.
12. The claimant testified that at the time of the hearing, she had applied for Social Security Disability benefits but that she had not received a determination as to eligibility.

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 (DHS or 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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. 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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work

experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 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" and that said impairment(s) have met the duration requirement (20 CFR 404.1520(c) and 416.920(a)(2)(ii) and (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). In order for an impairment(s) to meet the duration requirement, the impairment(s) must have lasted or be expected to last for at least 12 months, unless the impairment(s) is expected to result in death (20 CFR 416.909). If the claimant does not have a severe medically determinable impairment or combination of impairments that have met the duration requirement, he/she is not disabled. If the claimant has a severe impairment or combination of impairments that have met the duration requirement, 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).

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 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.

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).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since July 3, 2011. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms and has met the durational requirement. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements

about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

This Administrative Law Judge finds that the objective medical evidence of record does support the claimant's contention that she is suffering from a severe physical impairment that has lasted or is expected to last for 12 months. The objective medical evidence of record does show that the claimant's impairments meet the *de minimus* level of severity and duration required for further analysis. The claimant is therefore not precluded from a finding of disability at Step 2. The Administrative Law Judge will then proceed with the sequential evaluation.

The analysis then proceeds to Step 3. The objective medical evidence of record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, it must be determined whether or not claimant has the ability to perform her past relevant work. The claimant has a history of light to medium semi-skilled employment. There is objective medical evidence to support the contention that the claimant would be unable to continue to perform her past relevant work. The objective medical evidence shows that the claimant has bulging discs and bone spurs that are causing abutment of the spinal cord and nerve roots. The claimant testified that she is limited in her ability to stand, walk, and lift weight over 10 pounds. The claimant did state that she has some limitations with respect to sitting but that she can sit for extended periods. The claimant's testimony that she has limitations in the areas mentioned is reasonable given the weight of the objective medical evidence. The objective medical evidence of record shows that the claimant would retain the residual functional capacity to perform sedentary work. As the claimant's past relevant work consists of light to medium work, the claimant would therefore be unable to perform her past relevant work. The claimant is therefore not precluded from a finding of disability at Step 4. The analysis will then proceed to Step 5.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that the claimant has no residual functional capacity. The objective medical evidence of record shows that the claimant retains the residual functional capacity to perform sedentary work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. In this case, the claimant is an individual of advanced age (55 years old) with a high school education. There is no evidence that her education provides for direct entry to the workforce. Additionally, there is no evidence that the claimant has transferable skills as

defined by 20 CFR 416.968. Therefore, the Administrative Law Judge will proceed assuming the claimant's education does not provide for direct entry and that the claimant's past relevant work history does not provide her with transferable skills. Under the Medical-Vocational guidelines, an individual of advanced age (age 55), with a high school education with no direct entry, and a semi-skilled work history without transferable skills, who is limited to sedentary work is considered disabled pursuant to Vocational Rule 201.06. Accordingly, the Administrative Law Judge finds that the claimant meets the statutory disability standard for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's determination in this matter is **REVERSED**.

It is HEREBY ORDERED that the department shall determine if the claimant meets the non-medical criteria for the MA program. If so, the department is ORDERED to open a MA case from the date of application and issue supplemental benefits to claimant.

Additionally, the local office shall initiate a MA review by May 2013 to determine Claimant's continued eligibility for MA benefits.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 10, 2012

Date Mailed: May 10, 2012

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.

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