

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-32711
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 17, 2012
County: Genesee-06

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 17, 2012. Claimant, represented by [REDACTED] of Legal Services of Eastern Michigan, 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 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 November 1, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On January 26, 2012, 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), using Medical Vocational Grid Rule 201.18 as a guide.
- (3) On February 2, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On February 7, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 12, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and indicated that she retained the capacity to perform a wide range of light work, relying Medical Vocational Grid Rule 202.20 as a guide. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of Stage IV Kidney Failure, insulin-dependent Diabetes, Neuropathy in her hands and feet, poor vision due to retinopathy, coronary heart disease, status post PCA x2 in the left circumflex in 2010, hypertension, high cholesterol, depression, and anxiety.
- (7) On August 25, 2011, after running Claimant's labs, Claimant's doctor directed that Claimant be scheduled for dialysis education, a nephrology referral, and a renal transplant evaluation at Henry Ford Hospital. (Department Exhibit B, pp 1-4).
- (8) On September 23, 2011, Claimant was evaluated by a nephrologist. Claimant has a history of hypertension for the past 10-15 years, which had been uncontrolled the past 4 years. Claimant had no history of strokes, but had coronary artery disease resulting in the placement of two stents at St. Mary's hospital in 2009. Claimant's father, two brothers and a sister had died of chronic kidney disease. Claimant was experiencing blurring of vision and edema. (Department Exhibit A, pp 7-8).
- (9) On October 15, 2011, Claimant was evaluated by a nephrologist on behalf of the department. Claimant had a history of abnormal renal function, leg swelling, hypertension, chronic kidney disease stage 4, diabetes, nephrology and hypertension. The nephrologist noted Claimant's condition was deteriorating. (Department Exhibit B, pp 9-10).
- (10) On February 5, 2012, Claimant was admitted to the hospital for polyuria, polydipsia, and right lower quadrant pain for the past three days. Claimant has a medical history of diabetes mellitus, type 2, for the past 26 years, and was compliant with her insulin. Assessment and Plan: (1) Hyperglycemia, secondary to poorly controlled diabetes mellitus, type 2, and also Gram-positive bacterial rhinosinusitis. Lantus will be continued, 24 units subcutaneously at bedtime and Lispro to scale, 4 units pre-meal. For the next 6 hours, every-2-hourly Accu-Checks will be performed. A chest x-ray, 2-view of the chest, and a CT of the abdomen were scheduled to rule out gallstones; (2) Acute kidney injury on chronic kidney disease. Continue hydration and blood sugar control and follow-up with BMP in the morning. Renal workup will be conducted followed up with a CT of the abdomen to rule out obstruction; (3) Hypertensive urgency, now resolved. Restart home medications. Follow-up Troponins; (4) Normal anion gap metabolic acidosis secondary to chronic kidney disease. Follow-up labs; (5) Deep vein thrombosis and gas trointestinal prophy laxis; (6)

Leukocytosis, could be secondary to dehydration versus rhinosinusitis. Continue antibiotics and hydration; (7) Anemia, normocytic, normochromic, could be secondary to chronic kidney disease. Will do iron studies and start iron therapy if required; (8) Bacterial rhinosinusitis as described above. Start oral azithromycin. (Department Exhibit B, pp 6-7).

- (11) On April 6, 2012, Claimant was discharged from the hospital after a three day admission for kidney disease. Claimant's discharge instructions were no lifting, pushing, or pulling any thing over 10 pounds. Her fasting blood sugar at discharge was 254, BP 140/68 and her pulse was 74. She was prescribed 50 mg of Lopressor twice a day by mouth, 0.4 mg of Nitroglycerin every 5 minutes sublingually as needed, one 0.25 tablet of Xanax 3 times per day by mouth, 80 mg of Zocor at bedtime by mouth, 150 mg of Zantac everyday by mouth, 5 mg of Effient everyday by mouth, 10 mg of Norvasc everyday by mouth, 40 units of Lantus everyday at bedtime subcutaneously, 2 tablets of Tylenol every 6 hours by mouth as needed, 5 units of regular insulin before meals subcutaneously, regular insulin sliding scale every 6 hours subcutaneously with a chart based on her blood sugar, 120-150=2 units, 151-200=4 units, 201-250=6 units, 251-300=8 units, 301-350=10 units, and 351-400=12 units. The discharging physician also wrote that if Claimant's blood sugar was 70 or above 400, she was to call her primary physician. (Claimant Exhibit A, pp 1-5).
- (12) At the time of the hearing, Claimant was [REDACTED] years old with an [REDACTED] birth date; was [REDACTED] in height and weighed [REDACTED] pounds.
- (13) Claimant is a high school graduate and a Certified Nursing Assistant. Her work history includes nine years as a certified nursing assistant and six years as a home health aid.
- (14) 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).

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 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 October, 2011; 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 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 certified nursing assistant or home healthcare aid 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 your 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 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 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 November 1, 2011, 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 it is Ordered that:

1. The department shall process Claimant's November 1, 2011, 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.
2. The department shall review Claimant's medical condition for improvement in April 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: 4/20/12

Date Mailed: 4/20/12

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

cc:

