

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-38939
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 23, 2012
County: St. Clair County

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on May 23, 2012, from Lansing, Michigan. Claimant, and her boyfriend, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED]

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 September 5, 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 (SDA) 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 1, 2011, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On February 8, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that she was capable of past relevant work as a stocker, pursuant to 20 CFR 416.920(E).

- (3) On February 13, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On March 6, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On April 16, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B).
- (6) Claimant has a history of syncope episodes, cardiac implant, palpitations, migraines, L5 pressing on nerve, broken tailbone, colitis, diverticulitis, narcolepsy and asthma.
- (7) On January 18, 2011, Claimant's primary care physician diagnosed Claimant with Asthma and Syncope and opined that she was unable to work for approximately one year. (Department Exhibit A, pp 13-14).
- (8) On April 7, 2011, Claimant underwent a medical evaluation on behalf of the department. Claimant was diagnosed with chronic syncope, degenerative disc disease, and a history of asthma. The examining physician opined she was stable. (Department Exhibit A, pp 15-16).
- (9) On June 1, 2011, Claimant underwent a Polysomnogram and a Multiple Sleep Latency test. She had very minimal respiratory abnormalities and a total apnea-hypopnea index of 3.2, in REM sleep 8.9 with lowest oxygen level 87%. Her oxygen level was below 88% for 3 seconds and mild snoring was documented. The multiple sleep latency test confirmed pathological sleepiness. One sleep-onset REM period was documented during the MSLT. Most probably diagnosis is narcolepsy without cataplexy. According to her husband, several CT scans of the head have been done without significant findings which are again secondary to narcolepsy. (Department Exhibit A, pp 41-57).
- (10) On June 14, 2011, Claimant went to the emergency department complaining of left sided flank pain which was getting increasingly worse. She appeared to be in moderate distress. She was afebrile and slightly tachycardic at 10%. She had an elevated white blood cell count of 18.5. A CT Abdomen and Pelvis w/o IV contrast revealed she had diverticulitis in the proximal and mid descending colon with no evidence of drainable abscess. She was admitted to the hospital for a surgical consultation for splenic flexure diverticulitis. She was placed on IV antibiotics and pain medication. She was discharged on June 17, 2011, in stable condition and ambulating properly. (Department Exhibit A, pp 87-112).

- (11) On July 4, 2011, Claimant went to the emergency department with complaints of severe abdominal pain. Lab results showed an elevated white count of 17,000. The CT scan diagnosed her with acute diverticulitis, with an incidental finding of a left ovarian cyst. Admission to the hospital for treatment and evaluation of her diverticulitis was offered. Claimant declined, wanting to see her own primary care physician first. (Department Exhibit A, pp 17, 30, 114-127).
- (12) On July 5, 2012, Claimant was admitted to the hospital with acute diverticulitis after following up with her primary care physician who sent her back to the emergency department. Claimant was discharged on July 7, 2012, in stable condition with diagnoses of acute diverticulitis, asthma, an element of syncope and chronic back pain. (Department Exhibit A, pp 128-149).
- (13) On July 17, 2011, Claimant went to the emergency department complaining of abdominal pain. She was diagnosed with acute diverticulitis and treated. She was discharged in stable condition on July 18, 2011. (Department Exhibit A, pp 150-162).
- (14) On August 28, 2011, Claimant went to the emergency room complaining of left-sided lower and upper abdominal pain. She was administered IV medications and discharged in improved condition with instructions to follow up with her primary care physician. (Department Exhibit A, pp 163-183).
- (15) On September 6, 2011, Claimant underwent an esophagogastroduodenoscopy and biopsies from the small intestine, antrum and esophagus. The esophagogastroduodenoscopy showed mild gastritis without any ulcers or gastric outlet obstruction and a small sliding hiatal hernia without obvious esophagitis and without any evidence of Barrett esophagus, strictures or other pathology. The biopsy of the gastric antrum revealed chronic antral gastritis and the esophagus biopsy was consistent with chronic esophagitis. (Department Exhibit A, pp 184-191).
- (16) On October 27, 2011, Claimant went to the emergency room complaining of back pain and was in moderate distress. She was admitted to the hospital for intractable back pain. The MRI showed L5-S1 disc protrusion with nerve root impingement. She ended up having an epidural. Claimant was discharged on November 1, 2011, with diagnoses of lumbar radiculopathy, disc protrusion causing sciatic of the left lower extremity, depression, memory issues, chronic migraine headaches and syncope. (Department Exhibit A, pp 192-219).

- (17) On December 13, 2011, Claimant underwent left side transforaminal epidural steroid injections at L4- L5 and L5-S1 for lumbar radiculopathy and coccygodynia. (Department Exhibit A, pp 224-229).
- (18) On December 25, 2011, Claimant went to the emergency room complaining of abdominal and flank pain. She was diagnosed with gastritis, abdominal pain and vomiting. She was discharged in improved condition on December 26, 2011. (Department Exhibit A, pp 230-243).
- (19) On December 30, 2011, Claimant went to the emergency room complaining of abdominal pain. She was started on Cipro and Flagyl and continued to decline. She was admitted to the hospital secondary to the fact that she could not tolerate p. o. intake. She had had appropriate colonoscopies and EGD's which showed chronic gastritis and antral duodenitis. She was discharged on January 1, 2012, with diagnoses of gastritis, nausea, vomiting, mild dehydration, migraine headaches and a history of chronic syncope. (Department Exhibit A, pp 244-270).
- (20) On January 13, 2012, Claimant underwent a medical evaluation on behalf of the department. Claimant was diagnosed with syncope, colitis and migraines. The examining physician opined she was stable. (Department Exhibit A, pp 19-20).
- (21) On January 19, 2012, Claimant went to the emergency department complaining of right lower extremity pain as a result of a fall. She also stated she had a possible seizure three days ago. She was diagnosed with grand mal seizure and a fall. She was treated and discharged in stable condition. (Department Exhibit A, pp 271-291).
- (22) At the time of the hearing, Claimant was 41 years old with a July 12, 1970 birth date; was 5'1" in height and weighed 165 pounds.
- (23) Claimant completed the eleventh grade. Her work history includes housekeeping and grocery store stocking.
- (24) 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, Section 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 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 2008; 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 housekeeper 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 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 June 1, 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 June 1, 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 September, 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: September 24, 2012

Date Mailed: September 24, 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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