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

IN THE MATTER OF:



Reg. No.: 2012-43172 Issue No.: 2009; 4031

Case No.: Hearing Date:

September 19, 2012

County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, an in person hearing was commenced on September 19, 2012, from Kalamazoo, Michigan. Claimant personally appeared a nd testified along with her representative, form a personally appeared a nd testified along with her representative, form a personal persona

<u>ISSUE</u>

Whether the Department of Human Se rvices (the department) properly denied Claimant's application for Medical Ass istance (MA-P), Retro-MA and State Dis ability Assistance (SDA)?

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 October 1, 2011, Claimant fi led an application for MA-P/Retro-MA and SDA benefits alleging disability.
- (2) On January 28, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P indic ating that the impairment lacks duration of 12 months, pursuant to 20 CFR 416.909. SDA was denied per BEM 261, physical or mental impairment does not pr event employment for 90 days or more.
- (3) On April 2, 2012, the department caseworker sent Claimant notice that her application was denied.

- (4) On March 29, 2012, Claimant filed a request for a hearing t o contest the department's negative action.
- (5) On June 14, 2012, the State Hearing Rev iew Team (SHRT) found Claimant was not disabled. (Department Exhibit B, p 1).
- (6) Claimant has a his tory of G6PD defic iency, colon stricture, diverticulitis and hypertension.
- (7) On October 3, 2011, Cla imant presented to the emergency department with a 5 week history of abdominal pain, nausea and vomiting. A CT scan of the abdomen and pelvis reve aled a dist al large bowel obstruction in the si gmoid colon with ass ociated soft tissue mass, highly suspicious for colon cancer. She was admitted to the hospital and a colonoscopy was performed which found a sigmoid stricture and a st ent was placed within the sigmoid colon. She had a known his tory of div erticulitis which may have caus ed the diverticular stricture versus a neoplasm. Then on October 8, 2011, Claimant had a s igmoidectomy during whic h a pericolic abscess was encountered. Post operatively, Claimant was found to be anemic and required some blood transfusions. On October 14, 2011, Claimant was disc harged in stable cond ition with the pain well controlled with pain medication. (Department Exhibit A, pp 37-84).
- (8) Claimant is a 64 year old woman w hose birthday is Claimant completed high school and has a Bachelors of Arts degree in
- (9) Claimant had applied for Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medic al Ass istance (MA) program is established by Subc hapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or de partment), pursuant to MCL 400.10 et seq. and MCL 400.105. Department policies are found in the Bridges Administrativ e Manual (BAM), the Bridges Eligibility M anual (BEM), and the Reference Tables Manual (RFT).

The State Disability Assistanc e (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 MAC R 400.3151-400.3180. Depar tment policies are found in the Bridges Ad ministrative Manual (BAM), the Bridges Elig ibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendment is to the Act delineate eligibility criteria as implemented by department policy set for the 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 Suppleme ntal 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 physica I or mental impairment which meets federal SSI di sability 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 ca sh assistance to i ndividuals 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.

"Disability" is:

... the inability to do any subs tantial gainful activity by reason of any medica Ily 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. [SDA = 90 day duration].

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 as sessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is all eged. 20 CRF 413.913. An individual's subjective pain

complaints are not, in and of themselves , sufficient to establis h disability. 20 CFR 416. 908; 20 CFR 416.929(a) . Similarly, conc lusory statements by a physician or mental health pr ofessional that an indiv idual is dis abled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regul ations require several factors to be considered including: (1) the locati on/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effect iveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applic ant has received to relie ve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CF R 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitat ion(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 di sabled, federal regulations require a five-step sequential evaluat ion proces s be utilized. 20 CF R 416.920(a)(1). The five-step analysis require s the trier of fact to consider an individual's current work activity; the se verity of the impair ment(s) both in duration and whether it meets or equals a listed im pairment in Appendix 1; residual functional capacity to determine whether an individual c an perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to det ermine 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 eval uate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an indivi dual is disabled, or not disabled, at a particular step, the next step is required. 20 CF R 416.920(a)(4).

In Claimant's case, the daily ongoing treatment and symptoms of diverticulitis and other non-exert ional 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 disab ility, the federal regulation is require that several considerations be analyzed in sequential or der. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perf orm S ubstantial 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 cli ent is ineligible for MA. If yes, the analys is c ontinues t o Step 3. 20 CF R 416.920(c).
- Does the impairment appear on a special listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least equi valent 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 year s? 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 employ ed since March, 2007; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medica I data and evidence necessary to support a finding that Claimant has significant physical and mental 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 sequent ial consideration of a disa bility claim, the tri er of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of S ubpart P of 20 CFR, Part 404. This Administrativ e Law J udge 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 up on medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequent ial 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 medical findings, that Claim ant cannot return to her past relevant work because the rigors of working as a day care provider are completely outside the scope of her physical and mental abilities given the medical evidence presented.

In the fifth step of the sequential considerat ion 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 Claimant's:

- 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 CF R 416.963-.965; and
- (3) the kinds of work which exist in s ignificant numbers in the national economy whic h the claimant c ould 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 proc ess, Claimant has already establishe d a *prima facie* case of disability. Richardson v Secretary of Health and Human Servic es, 735 F2d 962 (6 th Cir, 1984). At that point, the bur den of proof is on the state to prove by substantial evi dence that Claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's medi cal 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 im pairments render Claimant unable to en gage in a full range of even sedentary work activities on a regular and continuing basis. 20 CF R 404, Subpart P. Appendix 11, Section 201.00(h). See Soc ial Se curity Ruling 83-10; Wilson v Heckle r, 743 F2d 216 (1986). Based on Claimant's v ocational profile (advanced age, Claimant is 64, has a high school educati on and an uns killed/semi-skilled work history), this Administrative Law Judge finds Claimant's MA/Retro -MA and SDA benefits ar e approved using Voc ational Rule 201.06 as a guide. Consequently, the department's denial of her October 1, 2011, MA/Retro-MA and SDA a pplication 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 sh all proces s Claimant's October 1, 2011, MA/Retro-MA and SDA application, and shall award her all t he benefits she may be entitled to rece ive, as long as she meets the remaining financial and non-financial eligibility factors.
- The depar tment shall review Cla imant's medical condition for improvement in September, 2014, unles s her Social Sec urity Administration disability status is approved by that time.
- 3. The depar tment shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her co ntinued treatment, progress and prognosis at review.

It is SO ORDERED.	
/s/	
	Vicki L. Armstrong
	Administrative Law Judge
	for Maura D. Corrigan, Director
	Department of Human Services

Date Signed: September 27, 2012

Date Mailed: September 27, 2012

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party wit hin 30 days of the mailing date of this Decision and Order. Admi nistrative 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 r equest for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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