

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-62943
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 25, 2012
County: Genesee-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon 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, an in-person hearing was commenced on October 25, 2012, from Lansing, Michigan. Claimant, represented by Mr. [REDACTED] of Advomas, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (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 February 14, 2012, Claimant filed an application for MA benefits alleging disability.
- (2) On March 26, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA for lack of duration. (Department Exhibit A, pp 1-2).
- (3) On April 10, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On July 3, 2012, Claimant's representative filed a request for a hearing to contest the department's negative action.

- (5) On August 17, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled due to lack of duration. (Department Exhibit B, p 1).
- (6) Claimant has a history of multiple sclerosis , optic neuritis, osteoporosis , post neck surgery, chronic back pain, anxiety, depression and a sleep disorder.
- (7) On January 20, 2012, Claimant was admitted to the hospital. She originally presented to the emergency department on January 20, 2012, post MRI results. She began experiencing left eye visual loss on January 12, 2012, and was seen in the emergency department on January 13, 2012. The eye exam at that time was negative and she was sent to an ophthalmologist, who in turn sent her to a neuro-ophthalmologist, and then she was again sent to the emergency department. She saw her primary care physician on January 20, 2012, to have an MRI. On receiving the MRI results, her physician referred her to the emergency department with worsening symptoms. Claimant states she cannot accurately see colors in her left eye and her right eye is occluded. She also complains of blurry vision in her left eye. She cannot see bright lights. She is also having difficulty word finding and finding her way around the hospital. The MRI Orbits with and without contrast revealed T2 hyperintensity and an abnormal enhancement of the left optic nerve, with a diagnosis of left optic neuritis. She appears to be compensating well for her visual defects at this time. She was discharged on January 25, 2012. (Department Exhibit A, pp 8-69).
- (8) On July 24, 2012, the MRI of Claimant's cervical spine with and without contrast revealed moderate sized left posterolateral and intraforaminal C6-C7 disc protrusion with severe left-sided C6-C7 foraminal stenosis. The MRI also showed mild mid to low cervical spine disc degeneration without spinal stenosis. (Claimant Exhibit A-B).
- (9) On August 9, 2012, Claimant underwent a medical evaluation by her neurologist on behalf of the department. Claimant is diagnosed with Multiple Sclerosis. She had an isolated episode of left optic neuritis in January, 2012. She has difficulty swallowing and fatigue. She also has a gait abnormality with a slow, impaired tandem. The neurologist opined she has physical limitations of lifting/carrying less than 10 pounds, standing/walking less than 2 hours a day and sitting 6 hours a day which are expected to last more than 90 days. (Claimant Exhibit C-D).
- (10) On October 22, 2012, Claimant underwent an anterior cervical fusion. Claimant testified she is to continue wearing the collar for another 6

weeks, and can only remove the collar to shower, during which, she must hold her head up when the collar is not worn.

- (11) On October 25, 2012, Claimant attended this hearing wearing a cervical collar and using a cane to ambulate. She was in obvious pain during the hearing and very tearful. She had problems sitting comfortably and difficulties getting up from the chair. She had to use her right arm to get up from the chair, as her left arm appeared to have decreased strength and motion. She also moved very slowly to and from the hearing room, even with the assistance of the cane. She continues to have residual effects from the optic neuritis and is unable to see clearly out of her left eye. She is also having noticeable problems speaking and swallowing.
- (12) Claimant is a 51 year old woman whose birthday is July 4, 1961. Claimant is 5'4" tall and weighs 90 lbs. Claimant completed high school. She last worked in June, 2009.
- (13) 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). 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:

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.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health

professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

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 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 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 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 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 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).

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).

Based on Finding of Fact #6-#12 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, her physical impairments meet or equal Listing 11.09:

11.09 Multiple sclerosis. With:

A. Disorganization of motor function as described in 11.04B;
or

B. Visual or mental impairment as described under the
criteria in 2.02, 2.03, 2.04, or 12.02; or

C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA programs. Consequently, the department's denial of her February 14, 2012, 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 February 14, 2012, 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 October, 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.

It is SO ORDERED.

/s/

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

Date Signed: October 26, 2012

Date Mailed: October 29, 2012

2012-62943/VLA

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/las

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