

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

IN THE MATTER OF:



Reg. No: 20122381
Issue No: 2009, 4031

Hearing Date: January 4, 2012
Calhoun County DHS

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 January 4, 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), retroactive Medical Assistance, and State Disability Assistance 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 July 13, 2011, claimant filed an application for Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefits alleging disability.
- (2) On August 29, 2011, the Medical Review Team denied claimant's application stating that the claimant was capable of performing other work.
- (3) On August 31, 2011, the department caseworker sent claimant notice that his application was denied.
- (4) On September 28, 2011, the claimant filed a request for a hearing to contest the department's negative action.

- (5) On December 1, 2011, the State Hearing Review Team again denied claimant's application stating that the claimant retained the capacity to perform her past relevant work and further that the claimant retained the capacity to perform a wide range of medium work.
- (6) On February 13, 2010, the claimant underwent a diagnostic imaging test at [REDACTED]. The test was performed as a result of the claimant's complaints of chest pain and shortness of breath. The results of the study were negative with the examining physician noting "The heart mediastinum and the pulmonary vessels are within the range of normal considering the portable nature of the study. The lung fields are clear from any acute or active process. The hemidiaphragms are clear." (Department Exhibit A page 177).
- (7) The claimant had a CTA of the chest performed at [REDACTED] on January 8, 2010. The exam was conducted as a result of the claimant's complaints of shortness of breath and difficulty breathing. The results of the test were compared to a previous study of December 28, 2009. The impression was that the test was an essentially normal examination without identifiable pulmonary embolism or change from the previous study. It was noted that there were no identifiable filling defects to suggest pulmonary embolism and the aorta and mediastinum remained normal. There was also no pericardial effusion, no pulmonary infiltrates, pleural effusions, or pneumothorax and the heart appeared normal. (Department Exhibit A page 173).
- (8) The claimant also had a pulmonary function test performed on December 29, 2009. It was noted that absolute FEV1 was 93% of predicted and FVC was 86% of predicted, there was no evidence of obstructive lung disease. The lung volumes were preserved and there was no evidence of restriction and/or air trapping. Diffusion capacity was preserved at 85% of predicted and air resistance was slightly decreased at 69% of predicted. It was noted that the results were an overall normal pulmonary function test. (Department Exhibit A page 164).
- (9) On February 13, 2010, the claimant was admitted to [REDACTED] due to chest pain. It is noted that prior to discharge the attending physician spoke to the claimant's primary care doctor [REDACTED] and was told that the claimant had undergone "a large workup and all has been negative." The attending physician was told that [REDACTED] was of the opinion that the claimant's symptoms were anxiety related and requested that the claimant not be admitted. The claimant was not admitted and was instructed to follow up with her primary care physician. (Department Exhibit A pages 156-160).

- (10) The claimant was seen at [REDACTED] from January through April, 2010. The notes from said provider indicate diagnoses of fibromyalgia, hyperthyroidism, shortness of breath and obstructive sleep apnea, among others. The claimant has constant complaints during this time period of shortness of breath. (Department Exhibit A pages 127-136).
- (11) The claimant has also treated at the [REDACTED]. On April 13, 2011, the claimant was diagnosed with diabetes mellitus type 2 with good control and it was also noted that the claimant allegedly had atrial fibrillation but that the claimant in fact did not have atrial fibrillation. (Department Exhibit A pages 212-219).
- (12) On July 22, 2011, the claimant was seen by [REDACTED] at the request of the department. In summary of his examination, [REDACTED] reported that the claimant's physical exam was nearly normal and that she appeared to be "in no distress whatsoever". The doctor noted that the claimant appeared comfortable and relaxed. (Department Exhibit A pages 227-238).
- (11) Claimant is a 61 year-old woman, date of birth [REDACTED]. She stands 5'2" tall and weighs 155 lbs. She completed high school and received a diploma. The claimant subsequently obtained a certificate in cosmetology and is currently a licensed cosmetologist. The claimant is currently working as a cosmetologist and working around four hours per week. She makes around [REDACTED] per month.
- (12) The claimant had not filed for Social Security disability benefits as of the date of the hearing.

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).

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 MAC R 400.3151-400.3180. 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. The claimant is working, but she testified that she only works four hours per week and that she makes around [REDACTED] per month. Even though the claimant is currently working, her work does not rise to the level of substantial gainful activity. Therefore, the 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 not support the claimant's contention that she is suffering from a severe physical or mental impairment that has lasted or is expected to last for 12 months. While the claimant testified to severe pain and physical limitations, the objective medical evidence on the record does not support the testimony offered by the claimant. The claimant reports that she is suffering from lung problems yet the objective medical evidence shows that the claimant had a normal pulmonary function test and normal diagnostic imaging of her chest. The claimant further testified that she has heart problems; specifically that she is suffering from atrial fibrillation. However, the objective medical evidence shows no diagnosis of atrial fibrillation and all of the claimant's examinations and diagnostic imaging show normal cardiac findings. Additionally, the claimant's medical records from the [REDACTED] of April 13, 2011 specifically state that there is no atrial fibrillation. The claimant further testified that she is in pain on a daily basis as a

result of her fibromyalgia. However, her examination by [REDACTED] shows that she appeared to be “in no distress whatsoever”. The doctor further noted that “she appeared comfortable and relaxed which is surprising because she reports such severe discomfort that she has to be on methadone daily” (see Department Exhibit A pages 227-238). Although the claimant’s statements indicate that she has a severe impairment, there is simply no objective medical evidence to support the claimant’s testimony and therefore the assertion that she is suffering from a severe impairment within the meaning of the statute. Accordingly, the claimant is precluded from a finding of disability at Step 2.

Although the claimant has been precluded from a finding of disability at Step 2, the Administrative Law Judge will 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 objective medical evidence of record does not support the contention that the claimant would be precluded from performing her past relevant work. If the claimant had not been precluded from a finding of disability at Step 2, she would also be precluded from a finding of disability at Step 4.

Although the claimant has been precluded from a finding of disability at Step 2 and Step 4, the Administrative Law Judge will proceed with the sequential evaluation.

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 claimant has no residual functional capacity. The objective medical evidence of record shows that the claimant retains the residual functional capacity to perform medium, light, and sedentary work. Accordingly, the claimant is precluded from a finding of disability at Step 5.

The claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant’s claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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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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