

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-24048
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 7, 2012
County: Gogebic

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 March 7, 2012. Claimant, represented by her [REDACTED], 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?

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 September 29, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On December 13, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating Claimant was capable of performing other work.
- (3) On January 4, 2012, the department sent notice to Claimant that her application for Medicaid and Retro-MA had been denied.
- (4) On January 10, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On February 10, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform a wide range of simple, unskilled medium work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of uncontrolled diabetes, peripheral neuropathy, gastroesophageal reflux disorder (GERD), mood disorder, depression, borderline intellectual functioning, bilateral knee pain, and a pituitary tumor.
- (7) On March 30, 2011, Claimant went to the emergency department (ED), complaining of left ear pain and swelling. Claimant appeared to be in mild distress and her temperature was 102.6. Chest x-ray revealed an atypical appearance of the left helium and peribronchial cuffing suggesting small airways reactive process or viral syndrome. Claimant was diagnosed with an ear infection and pneumonia. She was prescribed Cipro, Tylenol and Tramadol and discharged home. (Department Exhibit A, pp 72-88).
- (8) On April 29, 2011, Claimant had a surgical consultation regarding a microcalcification in her right breast. A mammographic localized right breast biopsy was performed and she was diagnosed with diffuse changes of fibrocystic disease with multifocal lobular and small ductal microcalcifications. (Department Exhibit A, pp 67-70).
- (9) On May 16, 2011, Claimant underwent a psychological evaluation by the Disability Determination Service. Claimant's hygiene was adequate. She was quite hyperactive and mildly disorganized. Her motivation and insight were low. Her speech was spontaneous but not well organized. She was distractible and had the tendency to go off track. She needed a lot of structure in questions and also had to be frequently redirected to the subject at hand. Her intellect was estimated to be borderline. Diagnosis: Axis I: Major Depressive Disorder, recurrent, in partial remission, mild with mixed adjustment issues; Polysubstance Dependence in full remission by Claimant report; Axis II: Borderline Intellectual Functioning; Axis III: Type II Diabetes, reported brain tumor, recent breast biopsy with uncertain results, chronic ear infection, chronic dental problems, chronic fatigue, obesity; Axis IV: Economic problems; inadequate finances; problems with access to health care; inadequate insurances; problems with primary support group; attempting to support adult children in her home with inadequate income; dysfunctional family of origin; Axis V: GAF=48. The examining psychologist opined that Claimant's prognosis is guarded to poor and Claimant is incapable of managing her funds. (Department Exhibit B, pp 3-11).
- (10) On August 3, 2011, Claimant went to the emergency department complaining of bilateral leg swelling for the past two weeks. She also

stated that she is supposed to be taking Metformin, but cannot afford it. Claimant was diagnosed with edema in the lower extremities. (Department Exhibit A, pp 54-65).

- (11) On August 9, 2011, Claimant went to the emergency department complaining of bilateral leg pain, with swelling and tingling and that she was also out of medication for her diabetes. Claimant stated she does not take medication for her diabetes or pituitary tumor because she does not have health insurance and does not have money for the meter to test her blood sugars. The examining physician noted Claimant had poor hygiene. Claimant was diagnosed with diabetic neuropathy and venous insufficiency causing leg pain and edema. Claimant was prescribed Glucophage and Maxzide, and discharged in stable condition. (Department Exhibit A, pp 40-53).
- (12) On September 21, 2011, x-rays were taken of Claimant's knees. The right knee's x-ray revealed calcification in the quadriceps tendon insertion site and minimal spurring off the inferior pole of the patella. The x-ray of the left knee showed calcification at the quadriceps tendon insertion site. Both knees had minimal degenerative changes. (Department Exhibit A, pp 38-39).
- (13) On January 11, 2012, Claimant underwent a medical examination. Claimant was diagnosed with uncontrollable diabetes, GERD, mood disorder, and knee problems. The examining physician found Claimant was stable and able to meet her own needs in the home. (Department Exhibit A, pp 91-92).
- (14) Claimant is a 49 year old woman whose birthday is [REDACTED] Claimant is 5'8" tall and weighs 215 lbs. Claimant completed the ninth grade.
- (15) Claimant had appealed 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 2009; 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 the 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 home health care aide are completely outside the scope of her physical and mental 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 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 September 29, 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 September 29, 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 May 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: 5/24/12

Date Mailed: 5/24/12

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

■ [REDACTED]