

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

IN THE MATTER OF:



Reg. No.: 2012-40227
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 29, 2012
County: Lake County

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 May 29, 2012. Claimant personally appeared and testified.

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)?

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 December 22, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On January 17, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.
- (3) On January 24, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On March 13, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 25, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of degenerative chronic pain, obesity, fibromyalgia, anxiety, depression, osteoporosis, hypothyroidism, hypertension, shingles, diverticulitis, gastroesophageal reflux disease (GERD), bipolar disorder, and chronic fatigue.
- (7) On January 21, 2011, Claimant had an initial psychiatric evaluation assessment. Claimant had mild psychomotor retardation during her evaluation. She talked slowly, but her volume was okay. There was no looseness of association, no pressure of speech. She was depressed. She cried three to four times during the evaluation and she also mentioned that she cried a lot at home. She had mild psychomotor retardation and she talked very slowly. Her mood was depressed all the time. Her affect was blunted. She had low self-esteem, but denied suicidal or homicidal ideation. She stated that she had trouble with her recent memory and then trouble remembering things and she forgets things easily. Diagnosis: Axis I: Major depression, recurrent; polysubstance dependence, now mostly the alcohol dependence; Axis III: Hypertension, obesity, hypothyroidism, and osteoporosis; Axis IV: GAF=50. (Department Exhibit A, pp 37-39).
- (8) On February 17, 2011, Claimant saw her therapist complaining of depression, crying, moodiness, sleep problems, anxiety, racing thoughts, and irritability. Diagnosis: Axis I: Bipolar disorder, most recent depressed; Anxiety disorder; Axis V: GAF=45. (Department Exhibit A, pp 52-).
- (9) On February 26, 2011, Claimant underwent a medical examination. Her paraspinal musculatures were mildly tender to palpation, as well as spinous processes were tender to palpation as well. Claimant underwent multiple surgeries, upwards of 13 on her right lower extremity due to a fracture. She has chronic pain issues and a marked deformity of the right lower extremity with what appears to be multiple surgical healed scars. She is dependent upon a cane to ambulate. She does have an ataxic gait and is able to ambulate approximately 15 feet without the cane. She appeared very unsteady without the cane. She had difficulty mounting and dismounting the examination table. Also, her right lower extremity was extremely tender to palpation and mildly swollen, suggestive of perhaps a chronic pain reaction, possibly complex regional pain syndrome or reflex sympathetic dystrophy. (Department Exhibit B, pp 3-11).
- (10) On March 24, 2011, Claimant had an abnormal ECG revealing sinus bradycardia, low voltage QRS, nonspecific ST and T wave abnormality. (Department Exhibit A, p 79).

- (11) On April 7, 2011, Claimant saw her therapist for a medication review. Claimant reported her mood was anxious and was worse since she cut down on the Ativan. She complained of panic attacks, and shortness of breath. Diagnosis: Axis I: Major depressive disorder, recurrent, moderate. History of polysubstance abuse, in remission; Axis IV: Chronic mood problem; Axis V: GAF=50. (Department Exhibit A, pp 81-82).
- (12) On September 16, 2011, Claimant saw her primary care physician complaining of anxiety. She stated that she had been having severe agoraphobia with panic attacks as well. She stated that she has radiating pain from her left side of her low back all the way down to her great toe on the left side. She also has paresthesias on the dorsum of the right foot, secondary to the compound fracture of her right tibia which happened in 1988. She also has chronic back pain, shoulder pain, head pain, and chronic fatigue. She had muscle wasting to the right calf. Multiple scars over the right tibia, positive straight leg raising contralateral leg, while raising the right leg. Tenderness elicited on the paravertebral muscles overlying the L-spine. (Department Exhibit A, pp 33-34).
- (13) On September 30, 2011, Claimant returned to see her primary care physician. Claimant was taken off Prozac and prescribed Cymbalta at her last visit. Claimant stated that she can hardly notice a difference. Her gait is asymmetrical and she uses a cane for stability. Claimant was referred for an endoscopy as well as a colonoscopy for screening purposes of Barrett's secondary to her chronic acid reflux. (Department Exhibit A, pp 31-32).
- (14) On October 1, 2011, Claimant's primary care physician opined on her ability to do work-related activities. According to her physician, Claimant's ability to lift, carry, stand and walk is impaired. The maximum she is able to lift and carry on an occasional basis is 20 pounds, and the maximum on a frequent basis is 10 pounds. Her maximum ability to stand and walk during an 8-hour day is less than 2 hours. Claimant's ability to sit is not impaired, however, after sitting for prolonged hours she is in pain afterwards. She is able to sit between 3 and 4 hours in an 8-hour day. She has to frequently change positions to relieve discomfort and can sit 20 to 30 minutes before changing positions. She is only able to stand up to 5 minutes before changing position. Her physician noted that due to her postural limitations, Claimant would never be able to stoop, bend, crouch, climb ladders, kneel, crawl, balance or reach (including over her head). She also suffers from anxiety, depression, fibromyalgia and is unable to be in large crowds. If she were to be employed, her physician opined that she would miss work more than three times a month due to her impairments and as a result, Claimant was unable to work full-time. (Department Exhibit A, pp 122-124).

- (15) On November 1, 2011, Claimant underwent a medical examination. She was diagnosed with hypertension, chronic back pain, fibromyalgia, osteoporosis, hypothyroid, depression, and anxiety. On examination, she had muscle wasting to her right leg, scars over the right tibia, positive bilateral straight leg raises. The examining physician opined Claimant was in stable condition. (Department Exhibit A, pp 92-93).
- (16) Claimant is a 51 year old woman whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 210 lbs. Claimant completed the ninth grade.
- (17) 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 Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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, 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 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.

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 assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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 limitation(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 disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine 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 evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In Claimant's case, the ongoing back and neck 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 2010; 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 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 sequential consideration of a disability claim, the trier of fact must determine if 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 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 Claimant cannot return to her past relevant work because the rigors of working as a daycare provider 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 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 you 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 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). Based on Claimant's vocational profile (approaching advanced age, Claimant is 51, has a 9th grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA and SDA are approved using Vocational Rule 201.10 as a guide. Consequently, the department's denial of her December 22, 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 December 22, 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 June, 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: 6/13/12

Date Mailed: 6/13/12

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

