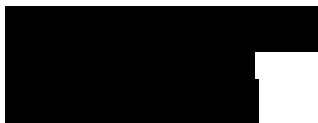


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-59145
Issue No.: 2009;4031
Case No.: [REDACTED]
Hearing Date: September 13, 2012
County: Mecosta

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the 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, a telephone hearing was commenced on September 13, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] [REDACTED] and Eligibility Specialist [REDACTED] [REDACTED].

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 on the competent, material, and substantial evidence on the whole record, finds as material fact:

- (1) On April 26, 2012, Claimant filed an application for MA-P/Retro-MA and SDA benefits alleging disability.
- (2) On May 21, 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 per BEM 261, physical or mental impairment does not prevent employment of 90 days or more.
- (3) On June 8, 2012, the department caseworker sent Claimant notice that her application was denied.

- (4) On June 8, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 30, 2012, the State Hearing Review Team (SHRT) found Claimant retained the capacity to perform light exertional tasks. (Department Exhibit B, pp 1-12).
- (6) Claimant has a history of fibromyalgia, chronic fatigue, mitral valve prolapse, cervical osteoarthritis, cervical dysplasia, GERD, osteopenia, valvular insufficiency, osteoarthritis of the knee, hypothyroidism, paresthesias, occipital neuralgia, depression, anxiety and high blood pressure.
- (7) On August 29, 2011, Claimant was admitted to the hospital with abdominal pain. She had had a laparoscopic cholecystectomy on 8/16/11 and had been doing well a few days prior to admission. Her abdomen was tender. A CAT scan showed some fluid around the liver and in the pelvis, but her white count and bilirubin was normal. She underwent HIDA scan testing, which revealed a bile leak in the left mid abdomen with subsequent tracking to the lower pelvic peritoneal cavity. She was taken for surgery where she had a laparoscopy done and had drainage tubes placed. She did well and was discharged on September 5, 2011, with directions to resume her medications. (Claimant Exhibits 58-70).
- (8) On September 22, 2011, Claimant's echocardiogram revealed that the left ventricular systolic function was normal with an ejection fraction of 74.2%. There was mild thickening of the anterior and posterior mitral valve leaflets. There was mild mitral valve prolapse with trace mitral regurgitation, and mild to moderate tricuspid regurgitation as well as mild aortic valve regurgitation. (Department Exhibit A, pp 14-17).
- (9) On April 19, 2012, Claimant underwent a medical examination by her rheumatologist on behalf of the department. Claimant was diagnosed with fatigue, depression, hypertension, hypothyroid, neck pain, fibromyalgia and elevated cholesterol. Based on the exam, Claimant was restricted to frequently lifting less than 10 pounds, and occasionally lifting 10 pounds, but never 20, 25 or 50 pounds or more. She could grasp, reach and do fine motor manipulations, but was restricted from pushing or pulling. She also had mental limitations regarding her comprehension, memory and sustained concentration. Overall, her rheumatologist indicated Claimant's condition was deteriorating. (Department Exhibit A, pp 2-4).

- (10) On June 1, 2012, the MRI of the cervical spine revealed C5-C6 circumferential disc protrusion/osteophyte and a mild central spinal canal and proximal bilateral neural foraminal stenosis without spinal cord impingement. (Claimant Exhibit 42).
- (11) On July 24, 2012, Claimant underwent a cervical facet block as her pain was limiting her activities of daily living and had not responded to more conservative therapy such as rest, exercise, physical maneuvers and medication. Claimant tolerated the procedure well and was discharged. (Claimant Exhibits 27-28).
- (12) On August 29, 2012, Claimant's primary care physician completed a medical assessment of Claimant for the department. Claimant was diagnosed with hypertension, hypothyroidism, occipital neuralgia and fibromyalgia. Claimant had chronic pain, non-restorative sleep, muscle weakness, morning stiffness, subjective swelling, frequent severe headaches, premenstrual syndrome (PMS), vestibular dysfunction, numbness and tingling/paresthesia, chronic fatigue, anxiety/panic attacks, irritable bowel syndrome, depression, hypothyroidism and mitral valve prolapse. The pain was noted to be moderate and frequent. Positive objective signs of Claimant's impairments included sensory changes, spasm, muscle weakness, chronic fatigue, tenderness, impaired sleep and impaired appetite. Claimant was also seeing a neurologist. Her primary care physician noted that Claimant's symptoms would frequently interfere with the attention and concentration needed to perform even simple work tasks. Claimant would be unable to perform routine, repetitive tasks at a consistent pace or detailed or complicated tasks. She also would be unable to have close interaction with co-workers or supervisors. Drowsiness and sedation side effects from her medications would also have implications for working. The primary care physician indicated she had been treating Claimant since April, 2003, and Claimant's impairments have lasted and can be expected to last at least 12 months. Functionally, Claimant could walk less than a block, sit and stand for 20 minutes up to an hour, and in an 8 hour day, would be able to sit, stand and walk for less than 2 hours. Claimant was restricted to rarely lifting 10 pounds or less. The physician estimated Claimant would miss 4 days of work a month due to her impairments and treatment. (Claimant Exhibit's 17-25).
- (13) Claimant is a 52 year old woman whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 185 lbs. Claimant completed high school.

- (14) 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 MAC R 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:

. . . 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. [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 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 pain and chronic fatigue as well as 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 April, 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 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 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 medical findings, that Claimant cannot return to her past relevant work because the rigors of working as a housekeeping manager 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 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 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 F.2d 216 (1986). Based on Claimant's vocational profile (approaching advanced age, Claimant is 52, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of her April 26, 2012, 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 April 26, 2012, 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 September, 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: 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 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.

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