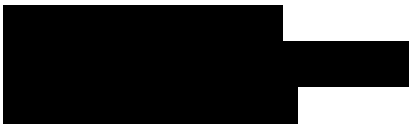


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-73703
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: December 11, 2012
County: Ionia

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

AMENDED 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, a telephone hearing was commenced on December 11, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included 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 benefit and State Disability Assistance (SDA) programs?

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 June 28, 2012, Claimant filed an application for MA, Retro-MA and SDA benefits, alleging disability.
- (2) On August 17, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA and SDA for lack of duration. (Department Exhibit A, pp 7-8).
- (3) On August 23, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On August 31, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On October 17, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pages 1-2).
- (6) Claimant has a history of strokes, hearing problems, eyesight-lazy eye, depression, anxiety, social disorder and forgetfulness.
- (7) On February 10, 2012, Claimant had her annual psychiatric evaluation at a community mental health. Claimant appeared her stated age. Her concentration and attention were moderately impaired. Her affect was flat and blunted and her mood was sad. Her insight was mildly impaired. Diagnosis: Axis I: Major Depression-recurrent, Alcohol abuse, Dysthymia, Social Phobia, Anxiety, Posttraumatic Stress Disorder; Axis III: Partially deaf due to head injury, back pain; Axis V: GAF=55. (Department Exhibit A, pp 43-55).
- (8) On May 17, 2012, Claimant underwent a medical examination on behalf of the [REDACTED] [REDACTED] [REDACTED]. Claimant has a history of back pain. She stated she cannot sit, stand or walk for more than one hour without back pain. She has no radicular pain or previous injury. She does not use a cane or walker to ambulate. She cannot lift more than ten pounds without having back pain. She had hearing aids in place and had no difficulty hearing the examiner. Conversational speech is normal. Gait is normal. She had no difficulty getting on and off the exam table, and mild difficulty with heel and toe walking and squatting. Her right eye was 20/70 and her left eye 20/50 without glasses. There is a right exotropia present. She has paraspinal muscle tenderness to palpation and spasms about her lumbar spine. The lumbosacral spine x-ray revealed mild spur formation in the lumbar spine with mild exaggeration of lumbar lordosis with slight levoscoliosis. There was also mild disc space narrowing present at the lumbosacral junction in addition to early degenerative changes seen in the sacroiliac joints. (Department Exhibit B, pp 4-7).
- (9) On June 8, 2012, Claimant had her medication review at community mental health. Claimant was taking medications as prescribed with no side effects. Her judgment was fair and she was oriented to person, place, day, date and year. Her concentration was moderately impaired and her affect flat. Her mood was depressed. Her eye contact was avoidant at times when she was talking about some past traumas such as her sister's suicide. She also complained of some numbing of her mouth, but she is not sure if it is medication related. (Department Exhibit A, pp 86-89).
- (10) On June 14, 2012, Claimant presented to the emergency department complaining of intermittent numbness to her face and her arm since she started taking Prozac a couple of months ago. She indicates her headache is present on the right side above her right eye and curving

around toward her neck, but not into her neck. A CT scan of the head showed no acute findings and the mastoid air cells and visible sinuses were clear. She was given a prescription for Vicodin for the headaches and discharged. (Department Exhibit A, pp 38-39).

- (11) On June 20, 2012, Claimant went to her primary care physician complaining of headaches. Onset was 5 days ago and the pain is constant. She was seen in the ER on 6/15/12 and her CT scan was normal. She was sent home with Vicodin which she has not been using. Her left arm has also been numb for the past 5 days and she has trouble tying her shoes with her left hand and keeping her balance since yesterday. She reports that her head feels weird, but not painful. She has at least a 2 month history of numbness around the mouth, which has progressed to include her cheeks. Claimant wonders if the Prozac is causing the headaches. (Department Exhibit A, pp 124-126).
- (12) On June 23, 2012, Claimant returned to the emergency department for the second time this week complaining of headache as well as slurred speech and facial droop. She was admitted to the hospital with acute weakness and slurred speech. She underwent a transesophageal echocardiogram on 6/27/12. It showed a normal left ventricular function and wall motion and ejection fraction of 50-55%. Concentric left ventricular hypertrophy was noted. Mitral valve prolapse with mild concentric mitral regurgitation. There was no clot or PFO. On 6/25/12, she underwent a transthoracic echocardiogram that revealed left ventricular function was normal with all segments contracting normally. A CT of the head showing cortical atrophy with areas of encephalomalacia was unchanged from the previous CT done on 6/14/12. An MRI of the brain showed findings consistent with acute ischemic disease with multiple zones of infarction present within the right frontal and parietal lobes. There was extensive loss of brain volume and multiple old regions of encephalomalacia and gliosis identified including left frontal, left parietal, bilateral occipital lobes, and right parietal lobe as well as right-sided cerebellum. There was no associated hemorrhage. A pelvic ultrasound was completed revealing extensive uterine fibroids including a cervical fibroid. Claimant was discharged on 6/27/12, still complaining of having left sided weakness. She had difficulty using her left hand for tasks such as feeding herself and drinking from cups. Claimant was able to ambulate in the hospital with the aid of a walker. For her acute cerebrovascular accident, she was started on simvastatin as well as lisinopril and aspirin. Discharge diagnosis: Acute CVA in right frontal and parietal lobes, Iron deficiency anemia secondary to prolonged vaginal bleed as well as alcoholism, Hypothyroidism, Hypertension, Alcoholism, Cerebral atrophy likely secondary to alcoholism and tobacco abuse. (Department Exhibit A, pp 17-37).

- (13) On July 9, 2012, Claimant underwent a medical examination by her primary care physician. She was diagnosed with mental health issues, stroke, hearing, vision, and memory loss. She appeared tired and was wearing glasses with a poor left gaze on visual fields. She also wore bilateral hearing aids and had a left ulnar deviation. Her lung sounds were decreased. She had mild epigastric discomfort. She had a weak left grip, a weak pedal push and weak gross motor control. Her gait was unstable. She was alert and depressed with poor short term memory. She was unable to recall her medical history. Her MRI showed acute ischemic disease with multiple zones infarction, extensive gliosis, encephalomalacia and extensive loss of brain volume. Her treating physician noted Claimant had physical limitations expected to last more than 90 days and she could never weigh less than 10 pounds and was unable to use her extremities for repetitive actions. She also had limitations in comprehension, memory, sustained concentration, following simple directions, reading/writing and social interactions. Her physician opined that Claimant was not capable of meeting her needs in her home as she needed assistance bathing, dressing, cooking, cleaning, and with her laundry. (Department Exhibit A, pp 200-201).
- (14) At the time of the hearing, Claimant was 49 years old with a [REDACTED] birth date; was 4'7" in height and weighed 118 pounds.
- (15) Claimant is a high school graduate with some college credit. Her work history included working as a caregiver for the department.
- (16) Claimant had applied for 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).

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.

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 inability to care for her own activities of daily living 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 claimant'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 June, 2012; 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 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 caregiver 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 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, the Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her June 28, 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 June 28, 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 January, 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: January 10, 2013

Date Mailed: January 11, 2013

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

2012-73703/VLA

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

