

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201310889
Issue No: 2009
Case No: [REDACTED]
Hearing Date: March 19, 2013
Oakland County DHS #2

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 19, 2013. Claimant personally appeared and provided testimony, along with her witness, [REDACTED], claimant's Michigan Rehabilitation Services counselor. The department witness was [REDACTED] orsey.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) application?

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 10, 2012, claimant applied for MA-P with the Michigan DHS.
2. Claimant did not apply for retro MA.
3. On October 26, 2012, the MRT denied.
4. On October 30, 2012, the DHS issued notice.
5. On November 9, 2012, claimant filed a hearing request.
6. On January 18, 2013, the State Hearing Review Team (SHRT) denied claimant.
7. As of the date of hearing, claimant was a 49 year-old female standing 5'4" tall and weighing 115 pounds. Claimant has a high school diploma and an Associates degree as a paralegal.

8. Claimant does not smoke cigarettes, drink alcohol or use illegal drugs.
9. Claimant testified that she has a driver's license, but rarely drives.
10. Claimant is not currently working. Claimant last worked in March, 2010 as a client liaison full-time for a law firm. The claimant worked 11 months before she was let go because she could not keep up with the mental demands of the job. Prior to that, the claimant worked for 13 months as a weight loss consultant for Jenny Craig. The claimant's prior work history was as a paralegal for 10 years.
11. Claimant alleges disability on the basis of Multiple Sclerosis (MS).
12. A July 30, 2012 psychological evaluation found the claimant to indicate that her complications consisted of fatigue, difficulties walking, balancing, numbness in her left hand, and staying focused. She reported problems with her short-term memory. Aptitude and achievement tests revealed strengths in areas calling for word knowledge, spelling, acquired knowledge, and short-term memory. Her scores fell between the average range and one standard deviation about the average range. In contrast, in areas calling for non-verbal logical/analytic reasoning, processing speed, and attention and concentration, her scores fell two to three standard deviations below the average range.
13. On August 8, 2012, the claimant underwent a physical medicine and rehabilitation evaluation. Claimant reported difficulty going up and down stairs. She reported that she was able to perform some light household activities with increased symptoms and rest periods. The claimant ambulated with an ataxic gait. She was unable to perform heel, toe or heel to toe walking. She was able to perform squatting maneuvers in a poor fashion (25%). Elevation from a seated position requires upper extremity support. Transfer activities were within normal limits and independent. Deep tendon reflexes in bilateral biceps, triceps, brachioradialis, patellar and Achilles are hyper-reactive. There was evidence of mild muscle spasticity in the left upper and lower extremities. Muscle tone was otherwise within normal limits. There was no evidence of ankle clonus. Plantar response was equivocal bilaterally. Light touch sensations were diminished in the left upper and lower extremities and within normal limits in the right upper and lower extremities.
14. An October 3, 2012 Medical Needs form (DHS-54A) indicates that the claimant has impaired balance and an unsteady gait, does need assistance with personal care activities and can not work at her usual occupation.

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 Bridges Reference Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and

- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. Therefore, the analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The claimant's previous employment as a paralegal and weight loss counselor would be too demanding cognitively and physically for the claimant to perform. The MS has caused the claimant severe fatigue, memory loss and concentration issues. Therefore, the claimant would not be capable of the previous types of employment. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). Claimant's impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant's MRS counselor credibly testified that she has observed that claimant is unable to perform her own activities of daily living. Further, she pointed out that the claimant's fatigue and memory loss is now being compounded with depression and she does not believe the

claimant is capable of performing any type of employment on a full-time basis or at the level of SGA. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments results in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529. This Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work on a regular and sustained basis. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's determination in this matter is **reversed**.

The department is ORDERED to make a determination if claimant meets the non-medical criteria for MA program and, if so, open an MA case for the claimant that covers the application time period.

The department is ORDERED to review this case in March, 2015, if the claimant is not in payment status through the Social Security Administration (SSA).

/s/_____

Suzanne L. Morris
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 1, 2013

Date Mailed: April 1, 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 mailing 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.

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

SLM/cr

cc:

