

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-17103
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 2, 2013
County: Wayne-19

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 April 2, 2013, from Lansing, Michigan. Claimant personally appeared and testified along with her husband, [REDACTED] Participant on behalf of the Department of Human Services (Department) included Medical Contact Worker, [REDACTED]

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 August 12, 2012, Claimant applied for MA and Retro-MA.
- (2) On November 16, 2012, the Medical Review Team denied Claimant's application indicating Claimant was incapable of performing other work. (Depart Ex. A, pp 4-5).
- (3) On November 27, 2012, the department caseworker sent Claimant notice that MA/Retro-MA had been denied.
- (4) On December 10, 2012, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA action.

- (5) On February 11, 2013, the State Hearing Review Team denied Claimant's disability application indicating that Claimant was capable of performing light exertional tasks. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of strokes, hypertension, diabetes, left shoulder frozen capsulitis, and depression.
- (7) On July 24, 2012, Claimant underwent a medical evaluation by the [REDACTED] [REDACTED] [REDACTED]. Claimant presented with hypertension, diabetes, left leg and left shoulder pain. She walked with a mild limp on the left and did not use an assistive device. Range of motion in the left shoulder was diminished. She had no difficulty getting out of a chair, mild difficulty getting on and off the examination table, mild difficulty heel and toe walking, and mild difficulty squatting. (Depart Ex. A, pp 6-10).
- (8) On September 7, 2012, Claimant underwent a medical evaluation by her treating physician. Claimant complained of being off balance the last 18 months, with lightheadedness. She becomes lightheaded when she bends forward. She also complained of left shoulder pain with reduced range of motion and low back pain. She was diagnosed with type 2 diabetes, hypertension, gait ataxia, depression, and left shoulder frozen capsulitis. She had an ataxic gait and a positive Babinski. The physician opined Claimant's condition was deteriorating and she needed assistance with walking, shopping, cooking, cleaning, and completing activities of daily living. A CT and MRI of the brain were ordered. (Depart Ex. A, pp 18-19).
- (9) On December 12, 2012, Claimant's treating physician performed physical residual functional capacity evaluation on Claimant. Claimant was diagnosed with left shoulder frozen capsulitis, type 2 diabetes, two strokes, and depression. Claimant's gait was ataxic. She had a loss of balance, was lightheaded, with left shoulder pain, decreased range of motion in her lower back, and positive Babinski. Claimant's impairments were consistent with the symptoms and functional limitations. The physician noted Claimant was not capable of walking a block without rest and severe pain, and could only stand 5 minutes before needing to sit down, walk around, etc. Claimant required an assistive device for standing and walking, and could rarely lift and carry less than 10 pounds, twist, look down, turn head right or left, look up, or hold head in a static position. The treating physician opined that Claimant was incapable of even "low stress" jobs. (Depart Ex. B, pp 3-7).
- (10) Claimant is a 54 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 120 lbs. Claimant graduated from high school. Claimant last worked in February, 2010.

- (11) Claimant was appealing the denial of Social Security disability 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).

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 two strokes, ongoing pain, the requirement of an assistive device to stand and walk, 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 February, 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 cashier and supervisor 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.

At Step 5, this Administrative Law Judge must determine whether or not the claimant has the residual functional capacity to perform other jobs in the national economy. At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). This Administrative Law Judge finds that the objective medical evidence on the record does not support the finding that Claimant still retains the residual functional capacity to perform other work.

Claimant's treating physician, _____ completed a physical residual functional capacity assessment for Claimant on December 12, 2012. In the assessment, Claimant's physician opined that Claimant has a loss of balance, is light headed, has a left frozen shoulder with pain, a decreased range of motion in her lower back, and positive Babinski. Her gait is ataxic. She is unable to walk a block without rest and severe pain and can only stand 5 minutes before needing _____ to sit down. Claimant requires an assistive device for standing and walking, and can rarely lift and carry less than 10 pounds, twist, look down, turn head right or left, look up, or hold her head in a static position. Based on the assessment, her treating physician opined that Claimant was incapable of even "low stress" jobs.

20 CFR 404.1527(d)(2) states that a treating source opinion is given controlling weight if said opinion is supported by well supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other objective medical evidence on the record. As such, great weight is given to the opinions of Claimant's treating physician, and his opinions were supported by the objective medical evidence contained in the record and are supported by acceptable clinical and laboratory diagnostic techniques.

After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, it is found 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 54, 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 August 12, 2012, MA/Retro-MA application cannot be upheld.

DECISION AND ORDER

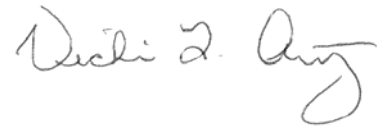
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's August 12, 2012, 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 April, 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.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 19, 2013

Date Mailed: April 19, 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.

2013-17103/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:

