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

#### IN THE MATTER OF:



Reg. No.: 2013-2012 Issue No.: 2009

Issue No.: 2 Case No.:

Hearing Date: February 12, 2013

County: Oakland-04

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

## **HEARING DECISION**

This matter is before the undersigned Ad ministrative Law Judge upon Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced on February 12, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist

During the hearing, Claimant wa ived the time period for the i ssuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 9, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

#### ISSUE

Did the Department of Human Services (DHS) pr operly deny Claimant 's Medic al Assistance (MA-P), Retro-MA and State Disability Assistance (SDA) 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 July 19, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On September 13, 2012, the M edical Review T eam (MR T) denied Claimant's application for MA/Retro-MA indicatin g s he was capable of performing past relevant work as a cash ier. SDA was denied due to lack of duration. (Depart Ex. A, pp 10-11).

- (3) On August 7, 2013, the department caseworker sent Claimant notice that her application for MA/Retro-MA and SDA had been denied.
- (4) On September 26, 2013, Claim ant filed a request for a hearing to contest the department's negative action.
- (5) On November 9, 2012, the Stat e Hearing Revie w Team (SHRT) found Claimant was not disabled and retained the capacity to perform past work as a cashier. (Depart Ex. B, pp 1-2).
- (6) Claimant is a 48 year old woman whose birthday is Claimant is 5'4" tall and weighs 230 lbs. Claimant has a high school education.
- (7) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
- (8) Claimant last worked in 2010.
- (9) Claimant alleges disability on the basis of hypertension, uncontrollable chronic asthma, and a pinched nerve in her back.

## **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters 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 manual s. 2004 PA 344, Se c. 604, es tablishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department sha ll operate a state di sability assistance program. Except as provided in subsection (3), persons eligible for this program shall includ e needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship re quirement who are at least 18 years of age or emanc ipated minors meeting one or more of the following requirements:

(b) A per son 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.

In order to receive MA benefits based upon disa bility or blindness, claimant must be disabled or blind as defined in T itle 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. Mi chigan 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 subs tantial gainful activity by reason of any medically dete rminable 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 t hat seve ral considerations be analyzed in s equential 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 CF R 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 dis abled regardless of your medical condition or your age, education, and work experienc e. 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 deat h? 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 clie nt'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 analys is continues to Step 5. Sections 200.00-204.00(f)?
- 5. Does the client hav e the Residual Func tional 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 consider s 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 a pproved. 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 im pairment(s) and how seve re 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 ultrasounds, X-rays);

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

Statements about your pain or other symptoms will not al one 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) **Sy mptoms** are your own description of your physical or mental impairment. Y our statements alone are not enough to establish t hat there is a physic al 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 clinic al diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicates pecific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientat ion, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, phy siological, or psychological phenomena which can be shown by the use of a medically accept—able laboratory diagnostic techniques. Some of these diagnostic—techniques include chemical tes—ts, el ectrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X -rays), and psychologic al 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 capac ity 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 dis abled 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 demons trable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analys is herein, Claimant is not ine ligible 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 min imus* standard. Ruling a ny ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. 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 analys is 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 Administrative Law Judg e finds that Claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applie s the biographical data of the applic ant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). 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 Hum an Services*, 735 F2d 962 (6 th Cir, 1984). At that point, the burden of proof is on the state to prove by substant ial evidence that Claim ant has the residual functional capacity for substantial gainful activity.

After a careful review of the credible and s ubstantial evidence on the whole record, this Administrative Law Judge finds that Cla imant's exertional and non-exertional impairments render Claimant unable to engage in a full r ange of even sedentary work activities on a regular and continuing bas is. 20 CFR 404, Subpar t P. Appendix 11, Section 201.00(h). See Soc ial Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

In this case, Claim ant's treating physic ian opined that Claiman t is persistently hypertensive despite multiple m edications, re sulting in time off from work. She is unable to meet her own needs in the home and needs assistance with housework and shopping. She does not ambul ate well and has frequent asthma attacks triggered by

usual aller gies, perfumes, and strong odors. The physician opined that Claimant is unable to work at her usual occupation and cannot work at any other job.

Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controllin g weight. 20 CFR 404.1527(d)(2). This evidence, as already noted, does rise to statutory disability. It is noted that at review Claimant's current medical records, if she has not alread y received a fully favorable decis ion from SSA, will be assess ed as con trolling with regards to continuing eligibility.

## **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof 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 July 19, 2012, MA/Retro-MA and SDA application, and shall award her all the benefit s she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
- 2. The department shall rev iew Claimant's medica I cond ition for improvement in June, 2014, unless her Social Security Administration disability status is fully 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: June 3, 2013

Date Mailed: June 3, 2013

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely 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 <u>MAY</u> 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

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