

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

IN THE MATTER OF:

[REDACTED]

Reg. No: [REDACTED]
Issue No: 2009 [REDACTED]
Case No: 102442533
Hearing Date: February 12, 2013
Midland County DHS

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, an in-person hearing was held on February 12, 2013. Claimant was represented by attorney DeAnne Rytlewski, of Legal Services of Eastern Michigan. Claimant personally appeared and provided testimony. The department witness was [REDACTED]. During the hearing, Claimant waived the time period for the issuance 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 April 16, 2013, 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) 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 July 30, 2012, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did apply for retro MA for the months of April, May and June, 2012.
- (3) On August 30, 2012, the MRT denied the claimant's request for MA, but approved the claimant for SDA.
- (4) On September 6, 2012, the DHS issued notice.
- (5) On October 11, 2012, claimant filed a hearing request.

- (6) Claimant testified she has filed an SSI application with the Social Security Administration (SSA).
- (7) On November 21, 2012, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the Claimant's request to leave the record open for new and additional medical documentation, the SHRT again denied the claimant on April 16, 2013.
- (8) As of the date of hearing, claimant was a 27 year-old female standing 5'3" tall and weighing 110 pounds. Claimant has a high school diploma and some college.
- (9) Claimant does not drink alcohol, smokes about ¾ pack of cigarettes per day and, while acknowledging some history of illegal drug usage, has not used illegal drugs since October, 2012.
- (10) Claimant testified that she does have a driver's license, but is not able to drive due to the paralysis in her left leg/foot.
- (11) Claimant is not currently working. Claimant last worked in June, 2012 assisting an electrician with paperwork (invoices, etc). Claimant worked this job part-time and seasonally for two years as she attended school.
- (12) Claimant alleges disability on the basis of a pinched sciatic nerve and paralysis in the left leg.
- (13) A July 12, 2012 Medical Examination Report (DHS -49) found the claimant had left leg weakness. She was unable to move her left leg, had poor fine motor movement and slurred speech at times. Claimant was unable to stand without assistance.
- (14) An EMG performed on July 13, 2012 showed evidence of sciatic nerve mononeuropathy of both legs, much worse in the left side, cause unknown. Lumbosacral radiculopathy could not be ruled out.
- (15) An EMG performed on July 17, 2012 showed no electrophysiological evidence of peripheral neuropathy of either arm.
- (16) On July 31, 2012, the claimant was referred for physical therapy with the diagnoses of peripheral myasthenia/ polyneuropathy, left leg weakness. Claimant reported severe pain in the extremity and an inability to put weight on it. Upon examination, claimant had some swelling throughout the left lower extremity from below the knee. She had increased pain throughout the palpation. Her left lower extremity had good light touch until her left knee directly inferior to her kneecap throughout her entire calf and foot. She had no light touch except on dorsal aspect of the left foot in quarter touch.

- (17) A September, 2012 examination indicates the symptoms have not resolved. Diagnosis is likely idiopathic lumbosacral plexopathies. Claimant continued to complain of pain and weakness of the left leg. She was continuing in physical therapy. Physical examination found weakness of the left foot in all directions. She had some right big toe weakness as well. She has some muscle atrophy of her lower legs and hamstrings on the left side. The physician opined that the prognosis may not be good due to the severity of the symptoms.

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 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 eligible 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. The MRT has already found the claimant meets the severity for disability as they have approved her for SDA. The only question that remains is if the claimant will meet the durational requirement of 12 months. This Administrative Law Judge finds claimant's condition to last beyond 12 months due to the poor prognosis given by her treating physician and muscle atrophy already occurring in claimant's left leg. Claimant has already undergone physical therapy and has not experienced much improvement. Thus, this Administrative Law Judge finds that the claimant's condition will last or is likely to last for 12 months and meets the durational requirement for MA purposes. 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. Due to the claimant's inability to stand unaided, severe pain and numbness of the left extremity, and muscle atrophy, this Administrative Law Judge

finds the claimant is unable to meet the demands of running an electrician's business. Claimant's severe pain is clearly corroborated by the medical evidence in this case. 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 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 July, 2014, if the claimant is not in payment status through the Social Security Administration (SSA).

Suzanne
Administrative

/s/ _____
L. Morris
Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 8, 2013

Date Mailed: July 8, 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/hj

cc:

