

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

**IN THE MATTER OF:**



Reg. No.: 2013-22635  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: April 30, 2013  
County: Oakland-02

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**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 April 30, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Specialist Neeley Trader.

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 July 26, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

**ISSUE**

Whether the Department of Human Services (the department) properly denied Claimant's application for Medicaid and Retro-MA benefits?

**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 November 19, 2012, Claimant applied for MA and Retro-MA alleging disability.
- (2) On December 20, 2012, the Medical Review Team denied Claimant's application indicating Claimant was capable of performing past relevant work. (Depart Ex.A, pp 9-10).
- (3) On January 3, 2013, the department case worker sent Claimant notice that MA/Retro-MA had been denied.

- (4) On January 10, 2013, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA action.
- (5) On March 14, 2013, the State Hearing Review Team again denied Claimant's application indicating that Claimant was capable of performing her past relevant work as an accounts payable clerk. (Depart Ex. B).
- (6) Claimant has a history of anemia, diabetes, cellulitis, cervical radiculopathy, lumbar radiculopathy, sciatica, degenerative disc disease, arthritis, hernia herniated intervertebral disc, lumbar spinal stenosis, hip pain and depression.
- (7) On January 22, 2012, Claimant presented to the emergency department with chronic back pain. The pain is present in the lumbar spine, sacroiliac joint and gluteal region. The quality of the pain is described as shooting and radiating down the right thigh and right knee. Claimant has drop foot on the right with decreased strength in right foot plantar flexion and extension. Claimant was administered Dilaudid, Ativan and Toradol for pain relief. Claimant was discharged with a diagnosis of uncontrolled chronic back pain. (Depart Ex. C, pp 1-4).
- (8) On September 2, 2012, Claimant was presented to the emergency department with chest pain. Her ECG was abnormal. Claimant had an exercise stress test showing no evidence of stress-induced ischemia with an ejection fraction of 70%. The rest of her work-up was unremarkable and she had no further complaints. She was stable for discharge on September 3, 2012, and instructed to follow-up with her primary care physician. (Depart Ex. A, pp 25-64).
- (9) On October 15, 2012, Claimant's physician at the pain clinic restricted Claimant to no working more than 18 hours a week and no lifting more than 10 pounds. (Depart Ex. A, p 24).
- (10) On October 22, 2012, Claimant underwent a medical examination. Claimant was diagnosed with chronic lumbar radiculopathy, lumbar spinal stenosis and facet arthropathy. She had positive straight leg raising on the right. Her MRI showed disc bulging and L5-S1 disc herniation. The physician opined that Claimant's condition was stable. (Depart Ex. A, pp 16-17).
- (11) On January 23, 2013, Claimant's treating osteopathic physician diagnosed Claimant with lumbar disc herniation, lumbar spinal stenosis, chronic low back pain and lumbar facet arthropathy. Her treating physician opined that Claimant is unable to sit or stand for more than 15 minutes. She is unable to lift more than 15 pounds and unable to walk for prolonged periods of time. Due to Claimant's severe limitations, she needs assistance with her activities of daily living. She is restricted from lifting over 10 pounds, no pulling, pushing, twisting, bending or overhead stretching. The treating physician added that Claimant's residual

functionality is poor because she is unable to perform any activities of daily living that are in excess of 10 pounds or involve long periods of work without taking a break in between. (Claimant Ex. A, p 1).

- (12) Claimant is a 50 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 220 lbs. Claimant graduated from high school. Claimant last worked in October, 2012.
- (13) 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 ongoing pain, 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 October, 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 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 an accounts payable clerk 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.

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 (6<sup>th</sup> 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.

Claimant's treating physician opined that Claimant is disabled based on her lumbar disc herniation, lumbar spinal stenosis, chronic low back pain and lumbar facet arthropathy, such that she is unable to even do her activities of daily living. Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

After careful review of Claimant's 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 F.2d 216 (1986). Based on Claimant's vocational profile (approaching advanced age, Claimant is 50, has a high school education and an skilled 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 November 19, 2012, MA/Retro-MA application cannot be upheld.

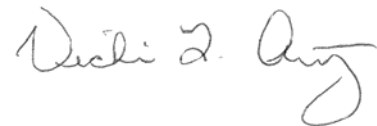
### **DECISION AND ORDER**

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 November 19, 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 August, 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: August 16, 2013

Date Mailed: August 16, 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

2013-22635/VLA

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.

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:

