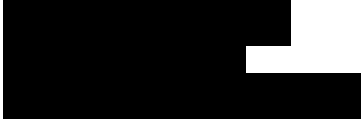


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2013-21963
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 30, 2013
County: Wayne-41

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 Medical Contact Worker [REDACTED] [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 October 2, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On December 4, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating Claimant is capable of performing past relevant work. (Dept Ex. A, pp 5-6)
- (3) On December 12, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On January 10, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On February 25, 2013, the State Hearing Review Team (SHRT) upheld the MRT denial finding the medical evidence of record indicates Claimant retains the capacity to perform a wide range of medium work. (Dept. B, pp 1-2).
- (6) Claimant has a history of back pain from collapsed discs, hypertension, posttraumatic stress syndrome, depression and muscle spasms.
- (7) On September 11, 2011, Claimant underwent a psychiatric evaluation at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Claimant walked slowly because she claims she has back pain. She maintained good eye contact. Her grooming and hygiene were adequate. She was easily emotional, and started crying while talking about how she has suffered due to a car accident and how she has not been the same since the accident and is dependent on family members. Her affect was constricted and her mood was sallow. Diagnosis: Axis I: Major depressive disorder; Posttraumatic stress disorder; Cannabis abuse; Axis III; Back problems related to prolapsed disc; Poor pain management; Hypertension; Muscle spasms; Axis V: GAF =50. Prognosis is guarded as Claimant has never had any treatment in the past. (Depart Ex. D, pp 12-14).
- (8) On November 25, 2011, an MRI was performed on Claimant's lumbar spine to correlate with radiographs from 11/14/11. The MRI revealed disc desiccation from L3 through S1 with the greatest disc space loss at L4-L5. At L4-L5, there is a broad-based disc bulge with hypertrophic facet arthropathy and thickening of the ligamentum flavum. There is resultant mild to moderate narrowing of the central canal with severe narrowing of the left neural foramen and moderate neural and the right neural foramen. The disc approaches and likely at least effaces the exiting nerve 4th roots, especially on the left. There is also a 6mm lesion in the left kidney which had a slight atypical signal characteristics for simple cyst, however, it was difficult to characterize secondary to small size and motion artifact present. A dedicated renal CAT scan was suggested to provide further characterization. (Depart Ex. D, pp 27-28).
- (9) On January 11, 2012, Claimant presented to her treating physician with continued low back pain and worse right than left leg pain. She was still having difficulty with any kind of bending, lifting, or twisting activities. Overall, her activities of daily living were limited because she was unable to cook or housekeeping. She was using Flexeril and Naproxen for pain management. Claimant ambulated slowly, but was able to get out of the chair and onto the exam table on her own. She ambulated in a symmetrical manner. She had a negative straight leg raise test bilaterally. The MRI from 11/25/11 was reviewed and was significant for disc desiccation from L3 to L4 and L4 to L5 as well as to L5 to S1. At Le-L4, there was mild broad-based disc protrusion with bilateral facet hypertrophy

as well as ligamentum flavum hypertrophy. There was only minimal foraminal narrowing not encroaching on either one of the nerve roots. At L4-L5, there was a broad-based disc bulge with severe bilateral facet hypertrophy as well as ligamentum flavum hypertrophy. There was also moderate to severe left than right foraminal as well as central canal narrowing. At L5-S1, there was a broad-based disc protrusion more paracentral to the right causing minimal bilateral foraminal narrowing without any central canal stenosis. The degenerative changes in the lumbar spine were significant for foraminal stenosis at L4-L5, worse on the left than the right impinging the L4 nerve roots.

- (10) On February 21, 2012, Claimant underwent a medical examination and was diagnosed with hypertension, obesity, back pain, tobacco abuse and hyperlipidemia. The examining physician noted Claimant was in no acute distress and was in stable condition. (Depart Ex. D, pp 23-24).
- (11) On June 1, 2012, Claimant presented to the emergency department with chronic back pain. She had run out of her pain medication. Claimant was alert and oriented to person, place and time. She appeared uncomfortable. Her gait was normal. There was no erythema/edema on the back. She had mild tenderness and muscle spasm along the right lumbar. She had full range of motion. She was administered Valium and the pain resolved. She was discharged home with a prescription for Naproxen and Flexeril and a diagnosis of chronic back pain. (Depart Ex. A, pp 11-29).
- (12) On May 16, 2013, Claimant underwent a psychological evaluation on behalf of the department. Claimant appeared to be in questionable contact with reality as she cried and seemed petrified and appeared psychotic at points during the evaluation. She appeared to try to be an accurate historian without evident tendency to exaggerate or minimize symptoms. She generally answered questions in a logical, goal directed fashion for the most part without loose, circumstantial, or tangential associations. Diagnosis: Axis I: Schizophrenia, paranoid type; Axis III: Obesity and other medical problems; Axis IV: Claimant cannot remember when she last worked but used to work as a nursing home aide; Axis V: GAF=51. Prognosis was fair. (Depart Ex. C, pp 1-5).
- (13) Claimant is a 42 year old woman whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 220 lbs. Claimant completed a high school equivalent education.
- (14) Claimant had applied for Social Security disability benefits and is appealing that determination.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

Under the Medicaid (MA) program:

"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.

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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a). Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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).

Based on Finding of Fact #6-#13 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, her spinal impairments meet or equal Listing 1.04(A) and 1.04(C):

1.04 *Disorders of the Spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine).

AND

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on a appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

DECISION AND ORDER

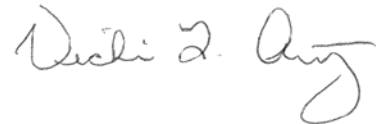
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

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

1. The department shall process Claimant's October 2, 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 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.

2013-21963/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:

