

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-5716
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: February 6, 2013
County: Monroe

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, an in-person hearing was commenced on February 5, 2013, at the DHS office in Monroe County. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

ISSUE

Did the Department of Human Services (DHS) properly deny Claimant's Medical 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 18, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On September 24, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating Claimant was capable of other work. SDA was denied due to lack of duration. (Department Ex. #A, pp 6-7).
- (3) On September 27, 2012, the department caseworker sent Claimant notice that her application for MA/Retro-MA and SDA had been denied. (Department Ex. #A, pp 4-5).
- (4) On October 10, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On December 11, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light work. SDA was denied for lack of duration. (Department Exhibit B, pp 1-2).
- (6) Claimant is a 37 year old woman whose birthday is [REDACTED]. Claimant is 5'0" tall and weighs 160 lbs. Claimant graduated from high school and has an [REDACTED] [REDACTED] [REDACTED].
- (7) Claimant had applied for Social Security disability benefits at the time of the hearing.
- (8) Claimant is not currently working and last worked in August, 2012.
- (9) Claimant does not have an alcohol/nicotine/drug abuse problem or history.
- (10) Claimant has a driver's license but has been unable to drive an automobile since her seizures in July, 2012, per her neurologist's orders.
- (11) Claimant alleges disability on the basis of epilepsy, recurrent uncontrolled grand mal seizures, toxic encephalopathy with memory loss, history of suprasellar cyst status post resection in 1997 and a ventriculoperitoneal shunt in 2010, hypokalemia, leukocytosis, chronic nausea, migraines, adjustment disorder, anxiety, and an enlarged heart.
- (12) On February 11, 2011, Claimant was transported to the emergency room after she had a syncopal episode at work. She works as a paramedic. They were in the process of transporting a patient from a nursing home, when she developed acute onset of left-sided headache, dizziness, and then experienced a syncopal episode lasting approximately 45 seconds. She was amnesiac for the ride to the ER. In the ER, she remained lethargic and was intubated for airway protection. There was concern that she may have actually had a seizure and was given Dilantin in the ER. She had an altered mental status, headache and weakness. She would answer some questions, then fall asleep and was difficult to arouse. She was moving all extremities and had increased swelling at the shunt site. She was admitted for further medical and neurologic evaluation. She was discharged on February 15, 2011, with a Dilantin level of 13.5. (Dept. Ex# A, pp 123-141).
- (13) On August 26, 2011, Claimant was transported to the hospital by ambulance after a seizure. She complained of a migraine and had a history of a shunt put in for a brain tumor. She was nauseas and vomiting. She was intermittently confused and slow to respond. Her mental status was altered. She was discharged on August 27, 2011 in stable condition and instructed to follow-up with her primary care physician. (Dept. Ex# A, pp 114-122).

- (14) On August 29, 2011, Claimant presented to the hospital after having multiple seizures. Per EMS, one of the seizures required Versed to stop. She was placed on IV Keppra in transition to p.o. Keppra. She had one seizure which was witnessed in the ER. She had been in the hospital three days prior also for seizures. She was admitted and remained stable over the course of 24 hours without seizure. She was alert and oriented at discharge and instructed to follow-up with her primary care physician in one week and no driving or operating heavy machinery. (Dept. Ex# A, pp 92-103).
- (15) On June 14, 2012, Claimant was admitted to the hospital status epilepticus for evaluation of medical management. She underwent an EEG, which demonstrated abnormality with diffuse beta activity likely drug effect. A chest x-ray demonstrated some mild mediastinal widening as such she did have a CT with contrast with evidence of Atelectasis, but no evidence of aortic dissection. It did demonstrate hepatic abnormality of unclear significance. Further follow-up with an ultrasound of her abdomen revealed a 1.2 cm hepatic lesion. She also had a mild troponin elevation of unclear significance. She was started on Dilantin and her Keppra was increased for treatment of her seizures. She was discharged in stable condition on June 17, 2012 with instructions to have her Dilantin level rechecked on June 10, 2012. (Dept. Ex# A, pp 22-23).
- (16) On July 10, 2012, Claimant's neurologist submitted a letter indicating that Claimant should be considered, at least temporarily, totally disabled from employment. The duration of this disability depends on getting her seizures under sufficient control such that she can safely drive. In addition, Claimant has also been experiencing side effects of medications which include dizziness, balance problems, fatigue, and tremulousness. (Dept. Ex# A, p 18).
- (17) On August 1, 2012, Claimant underwent a medical examination by her treating physician. Claimant was diagnosed with recurrent epileptic seizures, toxic encephalopathy with memory loss, staring, poor coordination, etc.; adjustment disorder, and anxiety. The physician noted she was unsteady and had been encephalopathic since June, 2012 with positive intermittent and uncontrolled seizures. A review of her brain MRI and EEG revealed they were both abnormal. Her physician opined that Claimant's condition was deteriorating and she was unable to meet her activities of daily living in her home as she required care with medications and had fallen numerous times. (Dept. Ex# A, pp 19-20).

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers 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 manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person 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.

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 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 #11-#16 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 physical impairments meet or equal Listing 11.04(B):

11.02 Epilepsy - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

Claimant testified that she is currently having continuous seizures 3 to 4 times a week and during the last two hospitalizations, she went into respiratory failure. She stated that since December, 2011, the seizures have become more frequent and last longer, and she was hospitalized four times in 2012 for grand mal seizures. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA and SDA programs. Consequently, the department's denial of her July 18, 2012, MA/Retro-MA and SDA 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 and SDA eligibility purposes.

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

1. The department shall process Claimant's July 18, 2012, MA/Retro-MA and SDA 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 February, 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
Administrative

/s/

L. Armstrong
Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 8, 2013

Date Mailed: February 11, 2012

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

VLA/las

cc:

