

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

IN THE MATTER OF:



Reg. No.: 2014-10835
Issue No(s): 2009; 4009
Case No.: [REDACTED]
Hearing Date: March 6, 2014
County: Genesee-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 6, 2014, from Lansing, Michigan. Claimant, represented by Attorney [REDACTED], appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA), 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 August 22, 2013, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On October 14, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating she was capable of performing past relevant work. SDA was denied for lack of jurisdiction. (Depart Ex. A, pp 1-2).
3. On October 16, 2013, the Department sent Claimant notice that her application for MA/Retro-MA and SDA had been denied.
4. On October 28, 2013, Claimant filed a request for a hearing to contest the Department's negative action.

5. On December 19, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform her past relevant work as a medical biller. (Depart Ex. B, pp 1-2).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 42 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 150 lbs.
8. Claimant does not have an alcohol history. She smokes half a package of cigarettes a day and marijuana.
9. Claimant has a driver's license but has not driven since the pain has increased and she the numbness down her left side began.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in December, 2012.
12. Claimant alleges disability on the basis of chronic abdominal pain, fibromyalgia, degenerative disc disease, back pain, depression and anxiety.
13. On [REDACTED], Claimant underwent a colonoscopy. She had a normal color into the terminal ileum. (Depart Ex. A, p 29).
14. On [REDACTED], Claimant had an MRI of the abdomen with and without contrast based on abdominal pain. The MRI was unremarkable there was no evidence of abscess. (Depart Ex. A, p 37).
15. On [REDACTED], Claimant's lumbar spine was x-rayed. There were mild spondylotic changes without acute process. The MRI of the thoracic and lumbar spine revealed a moderate sized left foraminal/extraforaminal disc protrusion at the L4-L5 level effacing the exiting L4 nerve root, a small central disc protrusion/extrusion at the L5-S1 level with associated right central annular fissure without stenosis, very mild multilevel circumferential disc bulges at the thoracic spine without stenosis and no cord edema, pathologic enhancement or osteomyelitis. (Depart Ex. A, pp 43, 45, 47).
16. On [REDACTED], Claimant began physical therapy. She was discharged from physical therapy on [REDACTED]. Claimant reported that she is always in pain. It has been difficult to do daily tasks. She reports she is most comfortable lying down. If she turns while she sleeps, it can wake her up between 1 and 5 times a night, but then she will fall right back to sleep. She can stand approximately 10 minutes. She can walk for 10

minutes, although she stated it is very painful to walk at this point, especially in her right abdomen area. She used a wheel chair for grocery shopping. When she sits, she leans significantly to the left to take the pressure off the right side. When she sits, she reports that it feels like she is "being crushed and she feels strangled around her ribs. With stairs, she uses a rail up the two steps into her home. She can dress, but it takes her longer. She also reports that she takes a shower and is able to care for her own self-care, but it takes her longer and she definitely can feel the pain, especially if she is reaching for a gallon of milk. The therapist opined that Claimant's prognosis is very guarded at this point. She will continue to follow up with her neurologist regarding any further diagnostic testing.

17. On [REDACTED], Claimant had an EKG after complaining of memory problems and dizziness. Her EEG was normal. (Depart Ex. A, p 11).
18. On [REDACTED], Claimant had an MRI of the brain without contrast. There was no evidence of acute infarct, intracranial hemorrhage or enhancing mass lesion. No MRI evidence of demyelination. The prominent pituitary gland with superior convexity is likely within the upper limits of normal in a menstruating female. (Depart Ex. A, p 13).
19. On [REDACTED], Claimant saw her neurologist for a follow-up visit. She was having a flare up of the pain after her Vicodin was stopped by her primary doctor. She was having a lot of pain the right ribs and left shoulder with intermittent numbness and tingling in the left side of the body. The exam showed her to be in no acute distress. An EMG of the right lower extremity, EEG, VEP, MRI of the brain and blood work were unremarkable including Lyme titer with no evidence of any demyelinating pathology. The neurologist opined that her pain was unclear, but may be related to an atypical case of fibromyalgia and might have a degree of somatoform pain from underlying depression. The neurologist increased the dosage of Wellbutrin and Neurontin. (Depart Ex. A, p 17).
20. On [REDACTED], Claimant underwent an independent medical evaluation by the [REDACTED]. Claimant presented with pain in the rib cage, abdomen and low back. Clinically, there was no abnormal finding noted. Claimant's lumbar spine examination is normal, except she did not want to extend. There were no neurological deficits noted. On palpation, she indicated tenderness on the abdomen. She is independent in her self-care and activities of daily living including her driving. Clinically, there is no evidence of lumbar radiculopathy. The examining physician opined that based on Claimant's history and examination, she would be able to perform her usual and customary activities including her occupational duties without any restrictions. (Depart Ex. B, pp 3-10).

21. On [REDACTED], Claimant had an independent psychological evaluation. The psychologist opined that Claimant's mental abilities to understand, attend to, remember, and carry out instructions of work-related behaviors are not impaired. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace is mildly impaired. She reports that her chronic pain is her predominate concern. Prognosis is guarded. Diagnosis: Adjustment Disorder with Mixed Anxiety and Depressed Mood. (Depart Ex. B, pp 11-14).

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 MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (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.

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 is 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 ultrasounds, 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).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since December, 2012. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to chronic abdominal pain, fibromyalgia, degenerative disc disease, back pain, depression and anxiety.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination

thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to chronic abdominal pain, fibromyalgia, degenerative disc disease, back pain, depression and anxiety.

Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, claimant has been diagnosed with chronic abdominal pain, fibromyalgia, degenerative disc disease, back pain, depression and anxiety. Claimant has a number of symptoms and limitations, as a result of these conditions.

The fourth step of the analysis to be considered is whether Claimant has the ability to perform work previously performed by Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent Claimant from doing past relevant work. In the present case, Claimant's past employment was a medical biller. Claimant's impairments fail to prevent Claimant from being able to perform the duties necessary for past employment. This Administrative Law Judge finds, based on the medical evidence and objective, physical and psychological findings, that Claimant

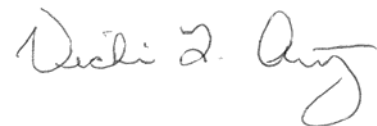
is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P/Retro-MA and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 24, 2014

Date Mailed: March 24, 2014

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

