

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

IN THE MATTER OF:



Reg. No.: 2014-22396
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 12, 2014
County: Livingston

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, an in-person hearing was held on June 12, 2014, from Howell, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistance Payment Worker [REDACTED] and Assistance Payment Supervisor [REDACTED].

ISSUE

Whether the Department properly denied Claimant's application for Medical Assistance (MA-P) 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 July 22, 2013, Claimant applied for MA/Retro-MA based on disability.
2. On December 11, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA and approved State Disability Assistance (SDA). During the hearing, the Department representatives testified that MRT had erred in granting Claimant SDA, because Claimant had not applied for SDA on her 7/22/13 application. Claimant agreed.
3. On December 19, 2013, the Department sent Claimant Notice that her application for MA/Retro-MA was denied.
4. On January 15, 2014, Claimant submitted a Hearing Request protesting the Department's negative action, and applied for SDA. (See Reg# 14-000476).

5. On April 2, 2014, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light work.
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 49 year old woman born on [REDACTED].
8. Claimant is 5'6" tall and weighs 197 lbs.
9. Claimant has a driver's license and is able to drive short distances.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in January, 2012.
12. Claimant alleges disability on the basis of reflexive sympathetic dystrophy, cervical radiculopathy, 3 fractured ribs, pneumothorax, status post arthroscopic repair of right knee, hyperlipidemia, gastroesophageal reflux disease, hypothyroid, migraines, anxiety, insomnia and depression.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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 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).

Applying the sequential analysis herein, Claimant is not ineligible 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 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). Claimant's past work history is that of a imaging technician, shipping and receiving clerk and waitress and as such, Claimant would be unable to perform the duties associated with her past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

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). 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 (6th 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.

In September, 2013, Claimant underwent a psychological evaluation by the Disability Determination Service. Diagnosis: Axis I: Major Depressive Disorder, recurrent, moderate; Panic Disorder without Agoraphobia; Axis II: No diagnosis; Axis III: Migraine headaches, recently torn meniscus and torn ACL, recent fracture 5th – 7th ribs and recent puncture to the right lung; Axis IV: Psychosocial stressors: financial, housing, relationship with family, health; Axis V: GAF=35. The examining psychologist opined Claimant's prognosis is guarded.

According to the DSM-IV, 4th Ed., a GAF of 35 indicates some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed adult avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

In February, 2014, Claimant's treating physician completed a Medical Examination Report at the request of the Department. Claimant's physician indicated that she had decreased range of motion in her knee and decreased range of motion in flexion and extension of spine. She was also diagnosed with radiculopathy and depression. The

physician indicated Claimant's condition was deteriorating and her physical limitations were expected to last more than 90 days. The treating physician also noted Claimant was limited in comprehension, memory, sustained concentration, following simple directions, reading, writing and social interaction and she was unable to meet her own needs in the home.

In April, 2014, Claimant's pain specialist physician completed a medical examination of Claimant. Claimant is status post traumatic injury from falling off a horse in June, 2013. She has a right knee ACL/meniscus tear, severe joint effusion with instability, right ankle sprain, lumbar HNP, reflex sympathetic dystrophy, cervical dystonia, cephalgia, radiculopathy, anxiety and insomnia. The physician indicated that Claimant is unable to stand and/or sit upright for six to eight hours due to severe right knee pain, LB, neck pain with headaches, weakness and gait disturbance. Her disability and impairments require her to lie down during the day due to her intractable pain. She is unable to reach above her shoulders or reach down to waist level or towards the floor. She can rarely carefully handle objects or handle objects with her fingers. She is restricted to lifting and carrying less than 5 pounds. Her impairments prevent her from lifting, pulling or holding objects. She is unable to squat or kneel and unable to turn parts of her body. Her impairments would prevent her from traveling alone due to the pain exacerbations or inability to change positions. The physician opined that Claimant's disability has lasted or will last one year or more and her prognosis is guarded and her disability is not likely to change.

In April, 2014, Claimant's orthopedist completed a Medical Examination Report for the Department. Claimant is diagnosed with a right knee ACL tear, meniscus tear, chondromalacia and synovitis. The surgeon opined that Claimant's condition is deteriorating indicating Claimant is status multiple surgeries to the right knee that requires treatment with brace, time off work and physical therapy.

Claimant is 49 years old, with a high school education. Claimant's medical records are consistent with her testimony that she is unable to engage in even a full range of sedentary work 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 F2d 216 (1986).

Moreover, Claimant's treating physician and orthopedic surgeon opined that Claimant's condition is deteriorating and her physical limitations are expected to last more than 90 days. Because the physician's and surgeon's opinions are well supported by medically acceptable clinical and laboratory diagnostic techniques, they have controlling weight. 20 CFR 404.1527(d)(2). Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA and Retro-MA program.

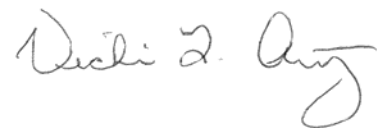
DECISION AND ORDER

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 and Retro-MA eligibility purposes.

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

1. The Department shall process Claimant's July 22, 2013, MA/Retro-MA application back to April, 2013, 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 June, 2015, 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: June 18, 2014

Date Mailed: June 18, 2014

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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

cc:

