

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

IN THE MATTER OF:



Reg. No.: 2014-24893
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: April 29, 2014
County: Oakland

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 April 29, 2014, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] and Assistance Payment Supervisor [REDACTED].

ISSUE

Whether the Department properly denied Claimant's Medical Assistance (MA) and Retro-MA 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 October 10, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On January 7, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of performing past relevant work. (Depart Ex. A, pp 1-2).
3. On January 13, 2014, the Department sent Claimant notice that her application for MA/Retro-MA had been denied.
4. On January 24, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

5. On March 22, 2014, the State Hearing Review Team (SHRT) found Claimant was not disabled and that she retained the capacity to perform past work as a data entry clerk. (Depart Ex. B).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 55 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 199 lbs.
8. Claimant does not have an alcohol, drug or nicotine problem.
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 and last worked in April, 2013.
12. Claimant alleges disability on the basis of a herniated disc, irritable bowel syndrome, hypertension, severe carpal tunnel syndrome, sarcoidosis, asthma, cervical cancer 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. The medical information indicates that Claimant has a history of a herniated disc, irritable bowel syndrome, hypertension, severe carpal tunnel syndrome, sarcoidosis, asthma, cervical cancer and depression. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets duration and severity. 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). In this case, Claimant has a history of working as a date entry clerk for the past 13 years. Based on the medical information in the file, and Claimant's credible testimony, this Administrative Law Judge finds Claimant cannot return to her past relevant work. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final 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 (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 August, 2013, Claimant had an independent medical evaluation by the Disability Determination Service. Claimant reported low back pain for the past year. The pain is on and off and increases when she is on her feet for a long time or sits too long. The pain is worse if she tries to lift heavy weight. She cannot lift more than 15-20 pounds. She complained of joint pain in both knees and ankles. The pain is worse with walking. She cannot walk more than half a block. The pain increases when she goes up and down stairs or stands too long. She has a history of sarcoidosis diagnosed in 1991 by CAT scan, bronchoscopy and biopsy. She was treated with steroids for a while until she lost her health insurance. She complained of shortness of breath most with walking, worse by going up and downstairs, worse if it is humid outside or if it is very hot. Her shortness of breath worsens with any activity or even doing her laundry. She complained of recurrent bronchitis. She was diagnosed with bilateral carpal tunnel syndrome, documented by EMG. She complained of pain and numbness to both wrists and hands. She reported waking up in the night with pain and numbness. She was diagnosed with back pain due to degenerative disc disease, joint pain due to degenerative joint disease, sarcoidosis, asthma, depression, bilateral carpal tunnel syndrome, depression and a peptic ulcer. The examining physician opined that Claimant appeared to be suffering from shortness of breath due to her sarcoidosis and also asthma. She is also suffering from joint pain due to arthritis and back pain. Her activity is very limited to light house work with interruption.

A second medical evaluation was completed by the Disability Determination Service in September, 2013. The examining physician diagnosed Claimant with sarcoidosis, bronchial asthma, hypertension, history of TIA with left hemiparesis, peptic ulcer disease, right perforated ear drum with attacks of vertigo, degenerative disc disease of the lumbosacral spine and bilateral carpal tunnel syndrome. The physician opined that Claimant has degenerative disc disease of the lumbosacral spine. An MRI was done which showed a herniated disc. She had a pulmonary function test done, which showed a low FEV, even with the bronchodilator, which indicated COPD and asthma. She has bilateral carpal tunnel syndrome with weakness of the hand grips and positive Tinel's bilaterally. She drops objects from her hands.

After careful review of Claimant's medical records, especially the two independent physician reports and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's 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 F2d 216 (1986). Based on Claimant's vocational profile (advanced age, Claimant is 55, with a high school education and an semi-skilled work history), this Administrative Law Judge

finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.06 as a guide. Consequently, the Department's denial of her October 10, 2013, MA/Retro-MA application cannot be upheld.

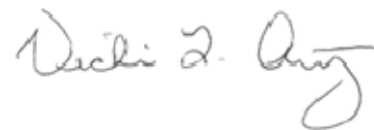
DECISION AND ORDER

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 October 10, 2013, 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 May, 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: 05/13/2014

Date Mailed: 05/14/2014

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/sw

cc:

