

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-31228
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 27, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MAP) and retroactive Medical Assistance (retro MA-P)?

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 May 1, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On July 21, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional.

(3) On August 7, 2008, the department caseworker sent notice that her application was denied.

(4) On August 29, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 26, 2008, the State Hearing Review Team again denied claimant's application stating that claimant's impairment is non-severe per 20 CFR 416.920(c).

(6) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 240 pounds. Claimant attended three years of college in [REDACTED] and also attended [REDACTED]. Claimant is able to read and write and does have basic math skills. Claimant is able to read and write in both Russian and English.

(7) Claimant last worked [REDACTED] as a bank teller. Claimant has also worked in a day care and at [REDACTED] in the men's department.

(8) Claimant alleges as disabling impairments: depression, menopause, hypertension and diabetes mellitus.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

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).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 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).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant's examination areas are all normal except for she has an obese abdomen and she has fatigue and depression (Pg 13).

The DHS-49 form in the file indicates the claimant can occasionally pick up in excess of ten pounds but never pick up ten pounds or more and that her condition is deteriorating. The DHS-49 also states that she can stand or walk less than two hours in an eight-hour workday and she does not need any assistive devices for ambulation and that she can use both of her upper extremities for simple grasping and reaching but use neither for pushing and pulling and fine manipulating or operating foot and leg controls. Claimant is stated to have morbid obesity and chronic pain from chronic fatigue syndrome and that she is very depressed (Pg 14). In

██████████, her family practice physician noted major depression, anxiety, and chronic fatigue syndrome as diagnoses with a normal physical examination (Pg 13). According to the ██████████ consultative exam she was 5' 6" and weight 250 pounds with a normal blood pressure, full range of motion and a normal gait (Pgs 7-9). A ██████████ psychiatric consultative exam noted a normal mental status exam with an intact memory. She was not in outpatient treatment and her diagnosis was post traumatic stress disorder and major depression (Pgs. 3-5).

At Step 2, the claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for a duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body however; there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant testified she has

no limitations upon her ability to walk, stand or sit and that she is able to shower and dress herself, bend at the waist and tie her shoes. Claimant testified that she can carry 10 to 15 pounds and that she is right-handed and her hands and arms are fine. Claimant testified that her legs and feet are fine and that she did fall a few months ago and hurt one knee but it is getting better. Claimant testified she does not really have any physical impairments except that she does have newly diagnosed diabetes mellitus, hypertension and she has some problems with her liver enzymes so she takes vitamins and feels better. This Administrative Law Judge cannot give weight to the treating physician's DHS-49 as it is internally inconsistent. The 49 indicates the examination areas are normal with the exception of her inability to walk or lift anything. There are no laboratory or x-ray findings listed on the DHS-49. The statement by the claimant's physician is that claimant is fatigued, obese and depressed but all other areas are normal. The form indicates that assistive devices are not required for ambulation. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant experiences some pain and depression. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury as consistent with the deteriorating condition. In short, the DHS-49 has restricted claimant from past residual occupational function based upon claimant's reports of symptoms rather than medical findings. Reported symptoms are insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish claimant had a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is mental residual functional capacity assessment in the record. The evidentiary record is insufficient to

find that claimant suffers a severely restrictive mental impairment. The psychological examination found in the file at pages 18 through 21 indicate that claimant was oriented to time, place and person. Claimant could recall five digits forward and three digits backwards. She could recall three out of three objects after a three minute time lapse. Claimant knew her birth date and could correctly name four recent past presidents. Claimant exhibited average capabilities for average fund of information. She could correctly name five large cities. She could name five currently famous people and two current events. Claimant completed serial 7's with four mistakes. Claimant had difficulty with proverbs because English is her second language and she stated that the proverb "the grass is greener on the other side of the fence" meant "things aren't what they look like to people." She says the proverb "don't cry over spilled milk" meant "don't worry about things." Claimant indicated that a bush and a tree were alike and that they both grow in the ground. She indicated they were different in size. Claimant exhibited average capabilities for social judgment and comprehension. She stated that if she found a stamped addressed envelope in the street she read whose it was and would try and get it to them. She stated that if she were the first person in a theater to discover a fire she would yell fire and get people out. Claimant was diagnosed with major depressive disorder and post traumatic stress disorder with intermittent panic attacks. Claimant exhibited moderately severe psychosocial stressors associated with severe financial problems, family and marital turmoil, a very limited primary support system, social and interpersonal withdrawal and isolation, a major depressive disorder and functional limitations and her current GAF was 52 and her prognosis was very guarded but she was able to manage her own funds. A [REDACTED] psychological evaluation indicates that claimant was oriented to time, place and person and she could recall four digits and four digits backward. She could recall two items of three objects in a three minute lapse. Claimant knew her

birth date and could correctly name four recent past presidents. Claimant exhibited average capability for general fund of information. She could correctly name five large cities, five currently famous people and two current events. Claimant completed three of Serial 7's. She was again diagnosed with major depressive disorder and a statement that she was generally healthy but could probably not manage her own funds with good judgment and that she needed psychological treatment by a psychiatrist for a proper use of psychotropic medication (Pgs 4-6).

The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based on her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 for the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was sedentary and light. As a bank teller, a day care provider or a person working in the men's department at [REDACTED], there is no medical evidence upon which this Administrative Law Judge could base the finding that claimant is unable to perform work which she has engaged in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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. 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. 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).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform other less strenuous tasks than in her prior employment that she is physically unable to do light or sedentary tasks demanded of her. Claimant's activities of daily

living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The claimant's testimony as to her limitations indicate that she should be able to perform light or sedentary work.

Claimant testified on the record that she does have severe depression and concentration problems.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is no sufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to person time and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical/psychiatric evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 2, 2009

Date Mailed: February 2, 2009

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 receipt 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.

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