

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: 2009-11947

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 12, 2009

Wayne 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 May 12, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 November 17, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On December 17, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 18, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On January 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 19, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(6) The hearing was held on May 12, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) The record was left open until June 13, 2009 for additional medical information.

(8) No additional medical information was submitted and the record was closed.

(9) Claimant is a 39-year-old woman whose birth date is [REDACTED]

Claimant is 5' 4" tall and weighs 140 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant was currently employed as a waitress earning \$2.65 an hour for thirty (30) hours per week. Claimant has also worked as a bartender and a test driver for vehicles and doing office jobs as a customer service representative.

(11) Claimant alleges as disabling impairments: cardiomyopathy, hypertension, congestive heart failure, atrial fibrillation, as well as cardio obstructive pulmonary disease.

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 engaged in substantial gainful activity and she does work thirty (30) hours per week earning \$2.65 per hour. Claimant is disqualified from receiving disability at Step 1. However, this Administrative Law Judge will proceed through the sequential evaluation process because claimant does have low income which may not meet the income standards for substantial gainful activity.

The objective medical evidence on the record indicates that a psychological evaluation dated [REDACTED] indicates that claimant is currently living alone and gets along fairly well with family members. Her hobbies include reading and doing puzzles and she appeared realistic, not delusional or grandiose. She appeared her stated age and came to the office visit with her parents. Her hygiene and grooming were fair. Her gait was normal. She sat in a chair comfortably and did not show any bizarre or unusual behavior. She was crying most of the time during the evaluation. She was 5' 5" tall and weighed 139 pounds. She was in touch with reality. Her self-esteem was low. Her psychomotor activity was normal. When asked what she wants to do with her life she said wants to live a full life. She had limited insight. Her speech was clear, coherent, and goal-directed. Her thinking processes were organized and easy to follow. She denied any hallucinations, delusions or paranoid ideations. She denied current suicidal or homicidal ideations. She had been feeling anxious and nervous since November 2008. She said that most of the time she feels helpless, hopeless, and useless. She denied any manic or

hypomanic episodes. She denied any obsessions or compulsions. She has had anxiety attacks since [REDACTED] with no agoraphobia. She was cooperative during the evaluation. Her affect was appropriate to her thought content and her mood was dysphoric. The claimant was alert and oriented to time, place, and person. She was able to repeat four out of four numbers forward and backward immediately. She was able to recall three out of three objects after five minutes. She stated her date of birth was [REDACTED]. The past presidents were Lincoln and Clinton. The large cities she stated were New York and Los Angeles. Famous people were Burt Reynolds and Marilyn Monroe. Her current events were September 11 terrorist attack. Calculations were $7+5=12$, $6 \times 5=30$, $100-7=91$, $20-3=17$, 14, 11, and 8. In response to “the grass is greener on the other side of the fence” she said “it may look greener but not always.” When asked the meaning of “don’t cry over spilled milk” she said “don’t cry over something that is not bad.” When asked how a bush and tree are different and similar she said the tree is taller than a bush and both of them are green. Claimant was diagnosed with adjustment disorder, mixed anxiety and depressed mood and panic disorder without agoraphobia. The claimant would be able to manage her own benefits funds and her GAF was 50 and prognosis was guarded.

(Pages 53-55)

A [REDACTED] record from [REDACTED] indicates that claimant was 5’ 4” tall and weighed 142 pounds. Her blood pressure was 120/78 and standing 116/78. Pulse averaged 86. Respiration was 16. Her HEENT – Eyes: Pupils were regular, round, equal with normal reaction to light. There was no jaundice or conjunctivitis. Fundi: No AV nicking. Otosopic examination: Intact tympanic membrane. Oral mucosa: Moist and normal. Her neck was supple and there was no bruit. Jugular vein was not distended at 30 degrees. Her chest was symmetric. Her breasts inspection and palpation were normal. The heart had apical impulse was

not palpable and non-visible. S1 changed in intensity. On the basis of atrial fibrillation, second heart sound was physiologically split, and she had a murmur of mitral regurgitation. Her lungs were clear with no rales, rhonchi, or wheezes. The abdomen was soft. The liver and spleen were not palpable and non-tender. There was no hepatjugular reflex. There was no abdominal or flank bruit. There was no rebound or rigidity. In her extremities there was no edema and no calf tenderness. The skin was normal. Neurologically claimant was unremarkable with the exception of hyperactive deep tendon reflexes. Dressing and appearance was good. (Pages 58-59)

Medical reports from [REDACTED] indicate that claimant's electrocardiogram showed atrial fibrillation with fast ventricular response. Her cardiac enzymes were normal. The BNP was done and it was 353. Echocardiogram should be done to assess left ventricular size, inhibitors, nitrates, diuretics as well as anticoagulation. Claimant needed a cardiac catheterization done which was carried out to rule out coronary artery disease. There was no coronary artery disease but there was mitral valve regurgitation. (Page 22)

Medical reports at page 19 indicate that claimant has smoked two packs of cigarettes a day since the age of 15 and that she was employed as a waitress and drinks alcohol varying from two beers a day to one pint of vodka. Claimant was strongly advised to quit smoking and drinking alcohol.

An electrocardiogram done on [REDACTED] revealed evidence of severe mitral regurgitation. The ejection fraction was 40% to 45%. Left ventricular systolic function was moderately reduced. The last chest x-ray on [REDACTED] did not reveal any acute infiltrative process for the CT of the thoracic on [REDACTED] had revealed evidence of right pleural effusion with adjacent atelectasis.

At Step 2, 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 the duration of at least 12 months. There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does continue to work despite the fact that she has had atrial fibrillation and had a cardiac catheterization. This Administrative Law Judge finds that claimant's impairments do not meet duration. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant testified on the record that she works thirty (30) hours per week and she usually walks, takes the bus, or gets a ride from her parents if she needs to go places. Claimant testified that she does cook everyday and cooks things like hotdogs, soup, and hamburger. Claimant does grocery shop one time per week and usually needs help with a ride and lifting of heavy groceries. Claimant testified that she does clean her home by dusting, doing dishes, wiping the bathroom, and doing laundry with help. Claimant testified that her hobbies are reading, drawing, and crossword puzzles. Claimant testified she can walk 2-3 blocks at a time, stand for 30-45 minutes at a time, and sit with no limits. Claimant is able to shower and dress herself, squat, bend at the waist, tie her shoes, and touch her toes. Claimant testified the heaviest weight she can carry is 5-10 pounds and that she is right-handed and she has carpal tunnel syndrome in her arms and hands. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication on a bad day is a 5 and 0 on a good day. Claimant testified that she used to smoke a half a pack of cigarettes per day but she stopped in November 2008 and she used to drink a couple of beers per day and she stopped in November 2008. Claimant testified that in a typical day she wakes up and brushes her teeth, washes her face, then goes to eat, and then goes

back to bed for an hour and then goes to work. She walks to work three blocks, work, and then come home and goes to bed. Claimant testified she is very tired, fatigued, pale, and bruises easily. Claimant testified she has no mental impairments.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers from a severely restrictive physical or mental impairment. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical or mental impairment. For these reasons, this Administrative Law Judge finds claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where 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 as a waitress. Claimant continues to work on the date of hearing as a waitress thirty (30) hours per week making \$2.65 per hour. Claimant is able to perform her past relevant work and there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past and continues to engage in. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to

a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained indicate that claimant has a history of alcohol and tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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. Claimant did testify that she does receive relief from her pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 1, Step 2, Step 3, Step 4, and Step 5 as she does retain the residual

functional capacity to perform her prior work as she is currently employed. Under the Medical-Vocational guidelines, a younger individual (age 39), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 claimant is disqualified from receiving disability at Step 1, Step 2, Step 3, Step 4, and Step 5. The department has 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: August 5, 2009

Date Mailed: August 5, 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.

2009-11947/LYL

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 receipt date of the rehearing decision.

LYL/vmc

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