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: 2009-16764
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
June 11, 2009
Oakland 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 June 11, 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 December 29, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On January 22, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 2, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On March 10, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 4, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested additional medical information in the form a psychiatric evaluation.

(6) The hearing was held on June 11, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on August 11, 2009.

(8) On August 13, 2009, the State Hearing Review Team again denied claimant's application stating in its denial that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.21 and commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work based on a Vocational Rule will be used.

(9) Claimant is a 52-year-old woman whose birth date is [redacted]. Claimant is 5' 6" tall and weighs 180 pounds. Claimant recently lost 40-50 pounds. Claimant attended the 12th grade and has a GED and is able to read and write and does have basic math skills.

(10) Claimant last worked June 2007 in a packaging company. Claimant has also worked as a typist and was in prison from 1991-2001 and worked as a teacher and kitchen aide.

(11) Claimant alleges as disabling impairments: hypertension, depression, coronary artery disease, gastric bypass, anxiety disorder, bipolar disorder, hyperthyroidism, herniated discs, infected implant posts, acid reflux, carpal tunnel syndrome and lack of teeth.

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 <u>not</u> 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 2007. Claimant is not disqualified from receiving disability at Step 1.

It should be noted that claimant testified on the record that she broke her foot June 6, 2009 in a syncopal episode.

The objective medical evidence on the record indicates that an August 4, 2009 psychological evaluation indicates that claimant was 198 pounds and 5'5" tall. She was attired and clean, casual clothing. Her hygiene and grooming were adequate. She did not need any devices to help her ambulate. She was right-hand dominant. Her vision and hearing were fine. She did not indicate any odd mannerisms. She had no teeth which she lost to decay and this makes her appear older than her stated age. Eye contact was normal. Claimant was the sole informant. She was observed sitting with her driver in the waiting room and watching television.

When the examiner went to get her from the waiting room, she greeted the examiner and was very polite. She filled out a form with her personal information without any assistance. She was very cooperative and polite. She was also alert and appeared comfortable. At no time did she complain of pain. She knew her full name, her age, birth date and home address. She understood the purpose of the examination, stating that her mind is messed up and she can't work. She knew it was the month of August and the date was August 4. She knew it was Tuesday and the year was 2009. She can travel by bus alone. She had no history of speech problems. She was articulate in casual conversations. She was quite verbal. She was able to remain on the topic at hand. She did not indicate any idiosyncratic language. Her pitch, intonation, rate, rhythm were appropriate. Her voice was soft and appropriate to context. Her grammatical structures were adequate. She was able to respond to questions asked without any difficulty. Her cognitive functions were intact and based on her academic skills, her good vocabulary, her intellectual functioning was in the low average range. Her memory of immediate and remote information was intact. She was able to repeat 6 numbers forward and 3 digits backward. She was able to remember her social security number. When asked to recall three items (elbow, apple, carpet), she remembered all three immediately and after three minutes, she was able to remember all three of them without cueing. She was able to remember the name of the President of United States was Obama and she remembered his predecessors as Bush and Clinton. She was able to remember the name of her elementary school when she was 6 years old as "Eerie". She was able to spell the word WORLD forward and backward (DLROW). She stated she ate two eggs prior to the examination. She did not experience any hallucinations. There was no poverty of speech. The form of her thought did not reveal any idiosyncratic modes of communication or use of language reflective of gross disturbances in her thought process, such as thought blocking,

derailment, or loosening of associations. She did not manifest any confusion nor did she appear distracted by internal or external stimuli. She was focused on her problems and wanted to make sure the examiner heard and learned everything that was to be learned about her. She consistently talked about passing out. When asked what she would do if she had three wishes? She responded, to be alright in the head; to be healthy and to go to heaven. She stated that in five years she would be in her own apartment and watch her own TV with a puppy. Her thoughts were goal-directed and followed a logical progression. During the examination, she did not show any confusion. She did not appear distracted by bizarre or unusual internal or external stimuli. She did not exhibit any overt symptoms of thought disorder. There were no loose associations. Her posture was normal. There were no stereotype body movements noticeable. Psychomotor retardation was not noted. Her affect was normal. She did not show much emotion when describing her problems. She showed no evidence of someone with bipolar disorder. For example, she was not hyperverbal. She did not engage in risky behaviors, displayed loose associations or reduced need for sleep nor did she show any poor judgment. She did not display rapid mood swings. Her fund of general knowledge was consistent with her background. She was able to name five out of five famous people such as Brad Pitt, Ellen DeGeneres, Michael Jackson, Walter Cronkite and Meredith on the Today Show. She named five out of five large cities as Los Angeles, New York, Baton Rouge, Knoxville and New Orleans. Her favorite holiday is Labor Day because she goes to picnics and she named a current national event as healthcare problems. She named a current international event as people getting killed. She listens to old music. She watches CSI, Interventions and news of the television. She was able to add, subtract and has no problems multiplying or dividing mentally. She stated that 2+2=4, 5+4=9, 10-5=5, 7-2=5, 5x6=30, 8/4=2, 6/3=2, 4x5=20. She was able to take 7 away from 100. Her

answer was 93. During the evaluation she was not easily distracted. Her recitation of over-learned sequences such as counting backward from 10 to 1 and reciting the alphabet backward was flawless. On a more difficult task when asked to add 2's in serial fashion her performance was good but she required two trials. She was unable to do serial 3's. Attention to auditory stimuli on a simple task of repeating numbers was about average (digit four=6). Her performance on a more difficult task of concentration on auditory stimulus was at below average (digit backward=3).

Claimant was asked what she ought to do if she saw a stamped, addressed envelope on the street, she replied, take it to the post office. When asked what she ought to do if she was in a movie theater and she was the first person to see smoke and fire, she replied, scream. When asked what she ought to do if she was lost in the forest in the daytime, she replied, I don't know. Claimant stated that the similarity between a tree and bush is that they have leaves and the difference was one (tree) is tall and one is short. In her abstract reasoning she was asked to interpret some proverbs. She was asked to interpret the proverb "the grass is greener on the other side of the fence" and her response was one has green grass and one does not. When asked to interpret the proverb "don't cry over spilled milk" she replied don't cry when you break something, no big deal. The diagnostic impression was that claimant was a 52-year-old woman with a history of addiction to prescription medications which she obtained from her doctor. The addiction was the core of her problems as it interfered with her occupational and social performance as well as her physical health. Her presenting complaints were consistent with someone who suffers from Somatization Disorder where there is a pattern of multiple physical and emotional symptoms. It appeared these symptoms may have existed since she was younger and exacerbated by her addiction to drugs. Some of the symptoms she presented with that are

consistent with Somatization Disorder were pain, passing out, chest pain or stomach problems. Her diagnosis was Somatization Disorder, Bipolar Disorder by history, [redacted] dependence, in partial remission, multiple medical/physical complaints, psychosocial stressors, unemployed, living situation, poor relationship with siblings and her current GAF was 62. She would not be able to handle her finances because of her addiction to prescription drugs. She may be tempted to mishandle her money. (Psychological Report of August 4, 2009)

On June 6, 2009, claimant had an x-ray of the right knee and patella and the impression was normal x-rays of the right knee and patella. She also had an x-ray of the left foot and the impression was undisplaced spiral oblique fracture distal shaft fourth metatarsal, left foot. On June 7, 2009, claimant had a syncopal episode and fell and fractured her left foot and she had a chest x-ray which showed a normal two-view chest x-ray. (Page 20) She had a CT scan of the brain and skull without contrast on June 6, 2009, which showed no acute intracranial abnormality apparent. The pituitary gland appeared to be slightly enlarged. This could be better studied with a MRI examination. No fracture was identified. (Page 21) On June 6, 2009, claimant had a normal CT scan of the cervical spine. Secretions were seen within the trachea. (Page 22) On June 8, 2009 she had a myocardial perfusion spect imaging with persantine and at rest, left ventricular wall motion analysis and ejection fractions. The impression was normal LV motion. Ejection fractions were within the usual limits of normal, no perfusion abnormality was identified to suggest ischemia or infarction. (Page 23) Claimant had an EKG on June 7, 2009 which indicated normal sinus rhythm with heart rate of 72 beats per minute. EKG was within normal limits. (Page 29) Another EKG on June 8, 2009 with a normal sinus rhythm was within normal limits. (Page 31) An echocardiogram on June 8, 2009 indicated normal findings with mild tricuspid regurgitant flow and show trace regurgitant flow. However, she had normal left ventricle, left

atrium, right ventricle and right atrial chamber size. There was normal aortic root size. Normal left ventricular wall thickness, wall motion and systolic function with a visual assessment ejection fraction of at least 60 to 65%. There was normal tri-leaflet aortic valve, normal mitral valve, normal tricuspid valve, normal pulmonic valve, and normal wall thickness and wall motion of the free wall of the right ventricle with preserved right ventricular function. No pericardial effusion. (Page 36)

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 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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an 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 that claimant has 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/bipolar state. The psychological report in the file indicates claimant was oriented to time, person and place. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer

all the questions at the hearing and was responsive to the questions. 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 that 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.

Claimant testified on the record that she lives with her roommate who supports her and she lives in a ¾ house and she's single with no children under 18. Claimant does receive Food Assistance Program benefits. Claimant has a driver's license but gets rides or uses [redacted]. Claimant testified that she does cook one time per week and cooks things like baked chicken and hotdogs. Claimant testified that she makes her bed and does laundry and dishes and that her hobby is reading. Claimant testified that she can walk a block on her crutches because she fractured her ankle and that she can stand for 10 minutes and sit for 10 minutes at a time. Claimant testified that she cannot squat and cannot bend at the waist far. Claimant testified that she can shower and dress herself, tie her shoes but not touch her toes. Claimant testified that she can carry five pounds and that she is right-handed and that she has carpal tunnel syndrome and numbness in her hands and wrists. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8/9 and with medication is a 4/8. Claimant testified that she does smoke a half of pack of cigarettes per day and her doctor has told her quit and she is not in a smoking cessation program. Claimant is not in compliance with her treatment program and, therefore, she is disqualified from receiving disability for that reason.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv). Claimant does continue to smoke when her doctor has told her to quit and, therefore, is not in compliance with her treatment program.

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 work or light work. Claimant has worked in quality packaging as a hot glue and packaging person and as a typist. Her prior jobs do not require strenuous physical exertion. There is insufficient objective 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. In addition, even though claimant did fracture her ankle, her fractured ankle impairment does not meet duration for purposes of Medical Assistance and retroactive Medical Assistance benefit eligibility. 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 some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if 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. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

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 in the information contained in the file indicate that claimant has a history of drug 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 testified on the record that she does have depression as well as bipolar disorder and anxiety disorder.

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 insufficient 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. In addition, claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Moreover, based upon her medical reports, it is documented that claimant had illegal use of prescription medications and does continue to smoke despite the fact that her doctor has told her to quit. These factors would have contributed to her physical and any alleged mental problems.

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 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 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 20, 2009

Date Mailed: August 24, 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 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

cc: [redacted]