

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: 2009-29597

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 1, 2009

Genesee 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, an in-person hearing was held on September 1, 2009. Claimant was represented at the hearing by [REDACTED]

ISSUE

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

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 16, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 18, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(3) On March 28, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(4) On April 15, 2009, the department caseworker sent claimant notice that her application was denied.

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

(6) On July 31, 2009, the State Hearing Review Team stated that it had insufficient evidence and requested additional information.

(7) On October 28, 2009, additional medical information was received and submitted to the State Hearing Review Team.

(8) The State Hearing Review Team again stated that it had insufficient information and requested a psychiatric evaluation and hospitalization information.

(9) Additional medical information was received and submitted to the State Hearing Review Team on January 22, 2010.

(10) On January 26, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The evidence supports the previous findings of the Medical Review Team and the State Hearing Review Team that the claimant's original condition was of a durational nature. Subsequent to this, is that the claimant's State Disability benefits are therefore no longer of a disabling nature as there is evidence of significant medical improvement which was indicated by the original medical evidence and for which MA-P and retroactive MA-P were originally denied. There is no severely impairing psychological condition. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date

of surgery. There is no severely impairing psychiatric condition. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. State Disability is denied per PEM 261 as the impairments would not preclude all work for 90 days. While State Disability is not technically a portion of this appeal, it follows that there is the anticipated significant medical improvement in the claimant's condition which would therefore necessitate the cessation of State Disability benefits as the claimant no longer meets the criteria for these benefits. Listing 1.02, 4.01, 13.09, and 12.04 were considered in this determination.

(11) Claimant is a 35-year-old woman whose birth date is [REDACTED]. Claimant is 5' tall and weighs 164 pounds. Claimant attended one year of college and also attended school for nurse's aide. Claimant is able to read and write and does have basic math skills.

(12) Claimant was last employed in April 2008 for [REDACTED] answering phones and setting appointments, and preparing some tax documents. Claimant had done that work from January to April for 10 years. Claimant has also worked in a nursing home as a nurse's aide and as an aide manager, and in a restaurant as a hostess, a cook, and a server.

(13) Claimant alleges as disabling impairments: thyroid cancer, hypertension, fibroid tumors, back pain, depression, anxiety, gastroesophageal reflux disease, neck dissection and arthritis, as well as a return of her goiter and nerve damage with lymph node damage, in addition to joint pain and memory problems.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 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 April 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has a diagnosis of bi-polar disorder by history with medical stressors and a history of alcoholism and drug abuse. Claimant has high blood pressure, acid reflux, neuropathy and a history of thyroid cancer with ongoing neck and shoulder problems, and hemorrhoids. The psychiatric report indicates that claimant should receive some assistance in managing any benefits assigned due to her history of alcoholism and drug abuse. Per the psychiatric evaluation of December 27, 2009, her demonstrated affect was largely within normal limits, but she reported a history of depression. Orientation responses were that the date was December 20, 2009, Monday, and she named herself, the actual time and that she was in a psychiatric office. Her memory tasks, she repeated six numbers forward and five numbers backward, and recalled three of three objects after three minutes. The past three presidents were Obama, Bush, Regan, and don't know. Her date of birth was given as May 8, 1974. Five large cities were Lansing, Cincinnati, Mt. Pleasant, Illinois and Iowa. Current famous people were the Jackson family, Janet Jackson, Eddie Murphy and Oprah. On calculation tasks: 100 minus 7 equals 93, 86, 79, 72 and 65; 2 plus 3 equals 5, 7 plus 9 equals 16, 3 times 8 equals 18, and 7 times 9 equals 63. In abstract thinking, the grass is greener on the other side of the fence was interpreted to mean, "it's nicer on the other side" and don't cry over spilled milk was interpreted to mean, "it's just milk. Don't cry about it." A bush and a tree

were alike in that “both had branches and grow from the ground,” and the difference in a bush is that “it’s short and a tree is tall.” On judgment questions, claimant if claimant found a stamped, addressed envelope, she would “put it in the mailbox,” and she would “go up front and alert” if she discovered a fire in a theatre. (New Information)

A mental residual functional capacity assessment performed December 15, 2009, by [REDACTED] indicates that claimant is markedly limited in several areas and moderately limited in most other areas.

A January 20, 2009 [REDACTED] Report indicates: Physical examination, the neck incision was well healed. There was no palpable mass or abnormality. The lungs were clear to auscultation. The doctor prescribed Thyroxin therapy in the interim and indicated as a plan, to repeat the total I-131 scan to make certain there was no residual uptake. If there was a residual uptake in the neck, then it would be recommended that she receive re-ablation. (Claimant Exhibit B, page 1). Her neck was subtle without cervical or any supraclabicular lymphadenopathy palpated. There was no keloid formation. The heart was is regular rate and rhythm with normal S1 and S2 sounds and without any murmur. Abdomen: bowel sounds were present and was soft, non-tender without organomegaly or any masses. In the extremities, the lower extremities revealed no pedal edema. Follow-up examination, July 21, 2009. (Claimant Exhibit B2)

Physical examination conducted March 19, 2009 indicates that claimant was alert and appropriate. Her blood pressure was 122/90. The rest of the vitals were stable. Weight was 163 pounds. HEENT examination was benign. Neck reveals scars of previous thyroid surgery with right supraclabicular fossa, deeper in comparison to the left. Heart S1 and S2 were regular. Lungs were clear to auscultation. Abdomen was benign on brief examination. In extremities, there was no leg edema. The lab was done before the visit and revealed thyroglobulin

undetectable, free T4, 1.5, TSH adequately suppressed at .1, and electrolytes and comprehensive metabolic panel are unremarkable. (Claimant Exhibit C1)

A July 23, 2009 assessment indicates that claimant's Stage I capillary thyroid test are normal, status-post total thyroidectomy with modified radical neck dissection with no evidence of local, regional, or distance disease on TSH greater than 46. (Claimant Exhibit D1)

A CT scan of the chest, dated January 10, 2009, indicates unremarkable CT of the chest. No evidence of pulmonary embolism is seen. No aortic aneurysm or dissection seen. No significant mediastinal or hilar adenopathy was seen. No pericardial effusion was seen. The lung parenchyma was unremarkable. No pleural effusion or pneumothorax. The bone window images were unremarkable.

A radiology consult of the chest and abdomen indicates a negative chest and negative abdomen. The lungs were clear. The heart sounds were normal. The mediastinum is normal. Previously described Bibasilar atelectasis has resolved. There is a non-specific gas pattern without evidence of bowel obstruction or free air. (January 10, 2009)

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. Claimant did have thyroid cancer. Her thyroid was removed. Claimant does not have any metastasis or any spread of cancer that has been indicated by any clinical reports. Therefore, claimant's impairments do not meet duration.

Claimant has reports of pain in multiple areas of her body; however, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. A medical examination report of October 19, 2008 indicates that claimant can frequently carry 10 pounds and had no physical limitations, and she did not need assistive devices for ambulation. She could do simple grasping, reaching, pushing and pulling and fine

manipulating with both upper extremities and could operate both foot and leg controls. She had no mental limitations. (Page 75) There is no medical finding that claimant has any muscle atrophy or trauma, or abnormality 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.

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 sedentary work. Claimant also has performed some light work. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which she has engaged in, 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 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. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

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. Claimant was able to answer all the questions at the hearing and was responsive to the questions and was oriented to time, person 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 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 the objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 35), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable

to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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, retroactive Medical Assistance and State Disability 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 this 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: May 24, 2010

Date Mailed: May 25, 2010

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/cv

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