

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: 2009-12561

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 28, 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 April 28, 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), retroactive Medical Assistance 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 August 25, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 23, 2008, the Medical Review Team denied claimant's application stating that claimant's application was denied based upon Public Law 104-121.
- (3) On October 29, 2008, the department caseworker sent claimant notice that her application was denied.

- (4) On December 2, 2008, claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 2, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis:

The claimant is capable of performing other work in the form of medium work per 20 CF R 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20 as a guide. The claimant has a long history of alcohol abuse. She also reports possible seizures but stopped taking her [REDACTED]. She also continues to drink alcohol despite being advised in September 2008 to not consume anymore alcohol. A neurological evaluation in October 2008 shows the claimant had decreased sensation in her lower extremities, but her exam was otherwise unremarkable. The claimant is capable of performing simple, unskilled medium work avoiding unprotected heights and dangerous moving machinery.

- (6) The hearing was held on April 28, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted on April 29, 2009, and sent to the State Hearing Review Team for further review.
- (8) On May 7, 2009, the State Hearing Review Team again denied claimant's application stating it had insufficient information and requested updated medical records.
- (9) Additional medical information was submitted and sent to the State Hearing Review Team again on July 6, 2010.
- (10) On July 8, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis:

The claimant has a long history of alcohol abuse. She was admitted in February 2009, due to alcohol withdrawal syndrome. She was on a ventilator due to acute respiratory failure, but was extubated prior to discharge. Discharge diagnosis included acute respiratory failure, supraventricular tachycardia, liver cirrhosis, pneumonia, dilated cardiomyopathy, and electrolyte imbalance. The claimant's ejection fraction was 25% at that time. However, with treatment, the claimant's condition did improve. Treatment notes, dated September 2009, indicated that claimant had not gotten around to see the cardiologist due to her busy

schedule. The Social Security ALJ denied the claimant's disability benefits in April 2010. There did not appear to be any appeal pending on the system. Based on the information available, claimant's condition did prevent her from working in February 2009, but did not prevent all types of work for 90 days or more from that time. Public Law 104-121 is cited due to the materiality of drug and alcohol abuse. The medical evidence of record indicates that the claimant's condition was improving or was expected to improve within 12 months from the date of her admission in February 2009. Prior to February 2009, the claimant's condition was not disabling. 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. SDA is denied per PEM 261 as the impairment would not preclude all work for 90 days.

- (11) Claimant is a 39-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 114 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.
- (12) Claimant last worked in 1994 as a cashier. Claimant has also worked as a bartender, a waitress, a nurse's aide, and as a realtor as a licensed real estate agent.
- (13) Claimant alleges as disabling impairments: seizures, depression, neuropathy, alcohol abuse, cirrhosis, balance problems, cardiomyopathy, anorexia, 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 1994. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that she lives with her boyfriend and that she is single with no children under 18. Claimant did not have a driver's license, she lost it for a DUI in 1997. She rides the bus or her mom takes her. Claimant testified that she does cook once per week in the microwave and that she doesn't grocery shop or clean her home. Her boyfriend does those things. Claimant testified that her hobby is reading. Claimant testified that she can walk 25 to 30 feet, stand for 10 minutes, sit for 1 to 2 hours but she cannot squat, bend at the waist, shower and dress herself, tie her shoes, or touch her toes. Claimant testified the heaviest weight she can carry is 2 pounds and that she is right-handed, and her hands and feet are fine. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10, and with medication is a 5 to a 6. Claimant testified that she does smoke a pack of cigarettes per day and that her doctor has told her to quit, and she is not in a smoking cessation program. Claimant testified that she stopped drinking in February 2009, and she stopped smoking marijuana years ago. Claimant testified that in a typical day she takes a shower and sits on the couch and rests because she is in pain.

This Administrative Law Judge did consider in excess of 225 pages of medical reports contained in the file.

Claimant received a notice of unfavorable decision from the Social Security Administration as of April 28, 2010. The Social Security Administration decision indicates that claimant has not worked since September 18, 2008. The Social Security decision, on page 4, indicates that emergency room medical records of [REDACTED]

reflect treatment received for acute alcohol intoxication, apparently resulting in a fall with multiple contusions with peripheral paresthesia (Exhibit 3F, pages 13 and 16). An arterial test was normal in September 2008 with no evidence of aneurysm (Exhibit 4F, page 84). An acute abdominal series on May 5, 2008 showed no evidence of obstruction. On August 5, 2008, the claimant tested positive for alcohol at .12, although on September 14, 2008 she tested negative. In October 2008, the claimant was described as having a history of alcoholism and possible seizure disorder in the course of an evaluation for painful lower extremity paresthesias and numbness. The medical examiner suspected she had peripheral neuropathy related to alcohol abuse. It is uncertain whether alleged spells were, in fact, seizures or whether they were related to alcohol withdrawal. At that time, she reported weaning herself off Dilantin. It was opined that she did not need to restart Dilantin as it appears she was having no further episodes of seizure (Exhibit 4F, pages 65, 60 and 53). Upon discharge from the hospital, the claimant admitted she had used a heating pad on the affected discolored area of her toes, which apparently had resulted in lesions. Thus, it was believed the lesions were due to thermal damage and not an embolic or vascular problem. It was again noted that she has a significant history of alcoholism with the claimant admitting she had been drinking heavily. She further reported smoking one pack of cigarettes per day, with a 20-year history of smoking. The medical examiner recommended she stop smoking and follow up with her primary care physician or neurologist. On September 13, 2008, the claimant admitting drinking one pint of alcohol per day. In May 2008, she was also assessed with chronic alcoholism with a recent diagnosis of seizure disorder after presenting to the emergency department for blood in her rectum. The emergency room diagnosis included alcohol dependence, seizure disorder, and history of domestic violence including head trauma and hypertension (Exhibit 4F). Without drug or alcohol addiction, she had mild restriction of activities of daily living, mild difficulties in maintaining social functioning, mild difficulties in maintaining concentration, persistence or pace, and there was no evidence of episodes of decompensation of extended duration. Physically, she was found to be capable of performing light work in December 2008, notwithstanding peripheral neuropathy of the bilateral lower extremities, history of seizures and history of alcohol abuse. She was limited to no more than occasional climbing, balancing, stooping, kneeling, crouching and crawling (Exhibit 6F and 9F).

More recent treatment source records reflect treatment from Henry Ford Hospital between February 13, 2009 and March 5, 2009. A cardiac Doppler study was consistent with cardiomyopathy in August 2009. It was opined that given her history, apparently of alcoholism, her cardiac condition was possibly related to alcohol. The claimant was assessed with peripheral sensory neuropathy on November 3, 2009, with chief complaints of low back pain, leg pain, rule out radiculopathy. She received ongoing treatment and monitoring, including adjustments and monitoring of medication (Exhibits 10F-12F)(Social Security Ruling, pages 4-5).

The Social Security Administrative Law Judge determined that if claimant stopped her substance abuse she would not be disabled, and that she was not determined disabled within the meaning of the Social Security Act at any time from the date of application through the date of the decision on April 28, 2010.

A Medical Examination Report, at page 173, dated February 26, 2009, indicates that claimant's condition is deteriorating and she can lift no weight, but she could stand and/or walk about 6 hours in an 8-hour day and sit for about 6 hours in an 8-hour day. Claimant was bedridden during the time she was in the hospital and could do no lifting, and she had problems with her comprehension, memory, sustained concentration based upon her hospital stay (pages 173-174).

This Administrative Law Judge is bound by the Social Security Administration's determination.

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 no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. 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. 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.

Claimant alleges the following disabling mental impairments: seizures, depression, and memory 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 insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient 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 oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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 upon her failure to meet the evidentiary burden. 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.

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. There is no 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. 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.

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. Claimant 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 objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. 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.

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.

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