

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: 2009-1845
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 21, 2009
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 21, 2009. Claimant personally appeared and testified. Claimant's mother, [REDACTED] also appeared and testified. 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) 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 January 25, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On August 18, 2008, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On August 25, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On September 2, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 23, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: there are partial reports in the file from an internist exam and what appears to be possibly a mental status exam dated [REDACTED]. However, the actual exams are not in the file. It would be helpful to obtain the actual exams for review. Additional medical information is suggested to assess the severity of the claimant's impairments. Please obtain the complete write-ups from the [REDACTED] mental status and [REDACTED] internist exams at [REDACTED]. We seem to have the first page but not the actual exam from either exam. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on January 21, 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 January 21, 2009.

(8) On February 2, 2009, the State Hearing Review Team again denied claimant's application stating that claimant was capable of performing work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.14. The State Hearing Review Team commented that this may be consistent with past

relevant work. However, there is not detailed description of past work to determine this. In lieu of denied benefits is capable of performing past work a denial to other work based on Vocational Rule will be used.

(9) Claimant is a 56-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 190 pounds. Claimant recently gained 40 pounds. Claimant is a high school graduate and has a dental assistant certification from two years of college. Claimant is able to read and write and does have basic math skills but finds math difficult.

(10) Claimant last worked November 2007 as a caretaker of disabled people. Claimant testified that she also worked as a lunch aide preparing lunch for disabled children and in the [REDACTED] bakery.

(11) Claimant alleges as disabling impairments: fibromyalgia, irritable bowel syndrome, diverticulitis, chronic fatigue, post traumatic stress disorder, obsessive compulsive disorder, agoraphobia, and depression as well as a compressed vertebrae and carpal tunnel syndrome and cervical spine injury to the neck as well as basil syncope.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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

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

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since November 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED] the claimant was discharged from partial program [REDACTED]. At the time of discharge her diagnosis included major depression, recurrent versus substance abuse depressed versus history of post traumatic stress disorder and personality disorder (Page 9). A DHS-49D form dated [REDACTED] showed the claimant had good hygiene. She was in good contact with reality (Page 51). Affect was appropriate and mood was mildly depressed (Page 50).

Claimant was given a GAF of 50.

The mental residual functional capacity assessment in the record indicates that claimant is not significantly limited or only moderately limited in most areas. She was only markedly limited in the ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances, the ability to work in coordination with or proximity to others without being distracted by them, the ability to complete a normal work day and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number of rest periods (Page 48 and 49 of the medical reports). Page 72 of the medicals indicates that claimant is able to carry on with her activities of daily living and household chores. Her mother reminds her to do things she is supposed to do and takes her places and they go shopping. Claimant was well oriented in all spheres (Page 70 and 71). She understood the purpose of the mental status examination dated [REDACTED]. She was able to repeat six digits forward and four backwards. She was not making too much effort during the test. Recently she was able to recall two objects out of three displayed to her three minutes earlier. She named past presidents Lincoln, Johnson, Jackson and she could not remember the

name of the president who was shot in Texas. When asked to cite the names of the presidents proceeding Bush, she mentioned Clinton but could not remember any further at which point she was moved to tears. She stated her birth date correctly. She stated five large cities to be Detroit, New York, Miami, Las Vegas and Los Angeles. Claimant's people were mayor of Detroit, Kwame Kilpatrick, Mrs. Granholm as the governor of Michigan and the capital of Michigan is Lansing. Her calculations were $6 \times 7 = 42$, $5 \times 9 = 45$. She appeared to be very slow in performing calculations. Subtraction plus serial sevens is 93, 86, and 69. Her abstract thinking... she offered no interruption for the proverb "strike while the iron is hot". Claimant stated that bushes and trees are alike because they have leaves and branches and roots and they need water and sun to survive. They differ mostly in size in that trees are tall while bushes are short. If she found a stamped addressed envelope she would place it in the mailbox. If she discovered a fire in a theater she would call or notify the manager. Her GAF was 54. The [REDACTED] report from [REDACTED] at pages 67 through 69 of the medical reports indicates that claimant was 62" tall and weighed 198 pounds. Her blood pressure was 170/72. Her pulse was 78 beats per minute. Her respirations were 18 beats per minute. Her temperature was 97 degrees Fahrenheit. With eye glasses claimant's right eye was 20/20 and left eye was 20/30. Sclera/perla was normal. Vision is good in the right eye and fair in the left eye without eye glasses. Fundi were normal. Ears were clear. Hearing was normal. Her neck was supple. Her thyroid was not enlarged. Her JVP was normal. Her carotid arterial pulsations are normal. No carotid bruit. No lymphadenopathy. PMI is not palpable and the heart sounds were feeble due to obesity. No palpable thrill. No murmur or gallop or rhythm. Claimant was comfortable sitting and in supine position. Accessory muscles of respiration were not working. There was no central cyanosis. Trachea was central. No tenderness over the anterior chest wall. Percussion note was

resonant. Cardiac and liver dullness were not obliterated. Breath sounds were vesicular with no adventitious sounds. Vocal fremitus and resonances are normal. Her abdomen was obese and soft with no organomegaly. No tenderness. Bowel sounds were normal. Rectal examination was deferred. There was a well healed surgical scar over the abdomen. No rash or pigmentation. In her extremities there was no clubbing, cyanosis, edema or varicose veins. Peripheral pulsations were not palpable in the lower extremities except ADP is 1+ and PT is 1+. Both feet were warm. No femoral bruit. Claimant could stand without support. She had no loss of cervical or lumbar lordosis. No tenderness over the spine. SLR was 90 degrees on both sides and is without pain. All movements of the hip joints were painful but limitation of movements. All movements of the hip joints are painful and flexion is restricted to 90 degrees. Flexion of the knees restricted to 120 degrees and pain free. Claimant can ambulate without support. Claimant can tiptoe walk, heel and tandem gait without difficulty. Claimant cannot squat more than 80 percent due obesity. Hand grip is equal and strong (5/5). Claimant can get on and off the examination table without any support. Claimant was oriented to time, place and person. Her memory is good. Her cranial nerves 2 through 12 were grossly intact. Romberg sign was positive. There was weakness of the flexors of both hip joints (4/5) mostly secondary to pain. Deep reflexes are sluggish all over. Claimant can remember the day, month, year, name of the President, but cannot remember the date. Claimant's diagnosis and impression was that the only functional limitation that she has is that she cannot squat more than 80 percent because of obesity and she had no limitation or mobility or activity. Her memory was good. She had fair grooming and hygiene. She responded fairly well to examining situation. There were no neurological deficits noted.

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 will last the durational requirement of

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 is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant has restricted herself from tasks associated with occupational functioning based on 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 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 that claimant's suffers severe enough mental limitations resulting from her reported depressed state. There is a mental residual functional capacity assessment in the record. It does not indicate that claimant is unable to perform the duties of a job even with her impairments. The evidentiary record is insufficient to find claimant suffers a severely restrictive 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 evidence of claimant's condition does not 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 mother in a townhouse and she is divorced with no children under 18. Claimant testified that she does have a driver's license and drives one time in two months. Claimant testified that she does not

cook, that her mother does it for her but she can make tacos. Claimant testified that she does grocery shop with her mother and she cleans her home by making the bed, vacuuming the floor and washing the dishes. Claimant testified that she can walk a block, stand for five to ten minutes and sit for 45 minutes at a time. Claimant is able to shower and dress herself but stated that she can't squat because of lower back pain. The claimant testified she is able to bend at the waist and tie her shoes while sitting and is unable to touch her toes. Claimant testified that the heaviest weight she can carry is a gallon of milk and that she's right handed and that her right hand is fine but her left hand has carpal tunnel syndrome. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and that it is always an 8 as she doesn't take any pain medications. Claimant testified that in a typical day she gets up, eats cereal and takes her medications and watches television for six hours and sometimes reads but it's hard. Claimant testified that she brushes her teeth and does her hygiene.

This Administrative Law Judge finds that claimant could probably still work as a lunch aide or in the [REDACTED] bakery even with her impairments. Claimant does not have any severe physical restrictions nor does her mental condition prevent her from working in the bakery or as a lunch aide. 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 the past. Therefore, claimant is disqualified from receiving disability 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 at least light or sedentary work if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform at least 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.

Claimant testified on the record that she does depression, agoraphobia, post traumatic stress disorder, obsessive compulsive disorder in the form of hoarding and anxiety.

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'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 was able to answer all the questions at the hearing and was responsive to all questions. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity based upon a mental impairment. Claimant was oriented to time, person and place during the hearing. 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 at least a wide range of light or sedentary work even with her impairments. Claimant is disqualified from receiving disability at 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: March 3, 2009

Date Mailed: March 4, 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.

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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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