

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: 2009-29382

Issue No: 2009

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 personally 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 September 19, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On March 13, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 18, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On June 11, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 31, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The objective medical does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of simple, skilled, light work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, skilled, light work. Therefore, based on the claimant's vocational profile of closely approaching advanced age, a high school graduate and semi-skilled work history, MA-P is denied using Vocational Rule 202.15 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on September 1, 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 September 2, 2009.

(8) On September 16, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.15.

(9) Claimant is a 50-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3" tall and weighs 175 pounds. Claimant attended one year of college and studied accounting and is a certified medical assistant. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked at [REDACTED] as a tax preparer. Claimant has also worked at [REDACTED] as resident advisor and at [REDACTED] inspecting parts.

(11) Claimant alleges as disabling impairments: congestive heart failure, heart arrhythmia, a pacemaker, a defibrillator, coronary artery disease, shortness of breath, back pain, arthritis, depression, muscle pain, as well as arm and neck pain.

#### 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 March 2009 where she worked as a tax preparer and was fired after several weeks. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] a [REDACTED] emergency note indicates that claimant's blood pressure was 153/71, her pulse was 87, respiratory rate was 20, and her temperature was 98.5. Her weight was 175 pounds and she had slipped on the ice and fell on her right knee and left shoulder and had pain all over. She was discharged with a knee sprain. On physical exam the claimant was alert. Her head was atraumatic. Her eyes had normal inspection. Her nose was normal to inspection. Neck was normal to inspection. Her neck was supple and her C-spine was non-tender. Cardiovascularly, she had normal heart rate and rhythm. Heart sounds were normal. Pulse was normal. There was no respiratory distress and her breath sounds were normal and her chest was non-tender. Her abdomen was soft and non-tender with no organomegaly. Her back had normal inspection. Her skin was intact and she had normal skin color and turgor. Skin was warm and dry. In her extremities there were no signs of infection involving the lower extremities. Left shoulder had moderate tenderness located in the posterior aspect of the shoulder, acromion process and coracoid process. There was limited range of motion due to pain and diminished abduction. Neurovascular was intact distally. No erythema, swelling, laceration, abrasion, or ecchymosis. No puncture wound or deformity. Anatomic snuffbox, right arm. No tenderness. Right ring finger had mild tenderness of the proximal phalanx, middle phalanx, and distal phalanx. (p. 7) She was diagnosed with a sprained right ring finger, right little finger, right knee, and left shoulder from a fall.

A psychiatric medical report dated [REDACTED] indicated that claimant was oriented to time, person, and place. She stated that it was Monday and she was in [REDACTED]. In her immediate memory she could remember five numbers forward and three numbers backward. It was the psychologist's impression that she under-represented her abilities on digits backward.

She pretended that she did not hear the psychologist after he said the numbers. She recalled two or three objects three minutes later and stated that Bush was the past president. Her birth date was correctly identified as [REDACTED]. The current president was Michelle Obama. Three large cities were Detroit, Kansas City, and Flint. Two current famous people were Jesus and Michelle Obama. Current events she said there was something on fire on the news today—a bingo hall. Her calculations were  $3+4=7$ ,  $8-3=5$ ,  $2 \times 4=8$ , and  $10/2=5$ . She stated that she couldn't subtract 7's from 100 in her head and she did not subtract 3's from 30 and her efforts were not credible. In her abstract thinking when asked what does don't count your chickens before they hatch mean, she said don't depend on getting the chickens before they really come here, don't depend on something to happen before it happens. When asked in what way are a tree and bush alike, she said they both have leaves and how are they different, she stated a tree has a trunk. In her judgment if there was a fire in a theater she would run and get out of there. If she found an envelope she would probably open it and look at it. For her future plans she stated she didn't know. The psychologist determined that claimant's mental abilities to understand, remember, and carry out instructions were only mildly impaired. In her abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace were mildly impaired. She had a current GAF of 61. Her prognosis was guarded but she would be able to manage benefit funds.

A medical reported dated [REDACTED] indicates claimant is 49 years old and she's an African American female. She weighed 172 pounds. Her height was 5'2". Her blood pressure was 140/72 in the left arm in a sitting position. Temperature was normal. Respirations were 22. Pulse was 98 per minute, regular, good volume. Snellen was 20/40 in the right eye, 20/40 in the left eye. Color was within normal limits. In her HEENT she was normocephalic. Pupils were

equal, round, reactive to light and accommodation. Extraocular muscles were intact. Sclerae were non-icteric. Conjunctivae were clear. Funduscopy was benign. Her throat was non-injected. The neck was supple with no evidence of any lymphadenopathy or thyromegaly. Carotids were bilaterally palpable with no bruit. The chest was mildly increased in the AP diameter and clear to auscultation. The heart sounds 1 and 2 were heard. No gallop. No distinct murmur. She had a pacer and a defibrillator in the upper left chest. No JVD. No edema. The abdomen was soft. Bowel sounds were present and normal and non-tender to deep palpation. Cranial nerves II-XII were intact. CNS examination was otherwise grossly within normal limits. Musculoskeletally, the claimant was able to ambulate without the aid of a cane. Range of motion was essentially within normal limits. An EKG had an abnormal sinus rhythm. There were significant ST T-wave changes throughout the EKG including leads 1, 2, 3, aVF, V5, V6 and leads 1 and aVL. She had marked prolongation of the QRS wave compatible with left ventricular hypertrophy. The impression was significant cardiomyopathy secondary to ischemic heart disease, essential hypertension, mild to moderate cardio obstructive pulmonary disease, probable cardiomegaly with associated left ventricular hypertrophy, and a bipolar disorder associated with major depression, as well as coronary artery disease. The medical doctor determined that claimant's affect was extremely flat and that she was very depressed. (pp. 32-33)

A [REDACTED] x-ray of the chest indicated the lungs were clear. The heart size and mediastinum were normal. There were no pleural effusions. The osseous structure and soft tissues were intact and normal. A dual chamber left subclavian cardiac pacemaker was present. (p. 35)

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. Although claimant does have a placement of a defibrillator and a pacemaker, her medical reports indicate that claimant's condition is stable and that she did work in March 2009 for [REDACTED] as a tax preparer. Claimant did not testify that she was unable to continue to work at that time, but that she got fired for failure to report to work. 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. 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 state.

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).

Claimant testified on the record that she is very depressed because her husband died in [REDACTED]. There is no mental residual functional capacity assessment in the record and her mental status examination was basically normal. 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.

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 and light. There is insufficient 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. 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 severely limited. Claimant did testify that she does have a driver's license and drives 1-2 times per week to her doctor's appointment and that she does cook microwave food and that she grocery shops three times per month with help because she gets tired. Claimant testified that she does make her bed. Claimant testified that she can walk less than a block, stand for 15 minutes at a time, and for 15 minutes at a time. Claimant testified that she can shower and dress herself as well as tie her shoes. Claimant testified that she can

carry a gallon on milk and she is right-handed. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication a 5/6. Claimant testified that in a typical day she feels bad about her husband and has bad nightmares and awakes choking for air so she doesn't like to sleep. Claimant testified that she used to get SSI for a closed head injury but chose to go back to work and she needs help until she can get herself together. She is not crazy or stupid.

Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment of 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. Based on the claimant's vocational profile of closely approaching advanced age, high school graduate, and a semi-skilled work history, MA-P is denied using Vocational Rule 202.15.

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 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 his 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: November 6, 2009

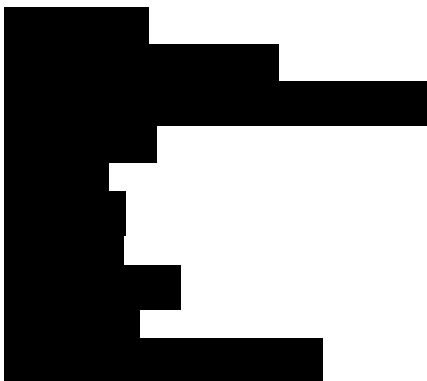
Date Mailed: November 6, 2009

**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

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