

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: 2009-30330

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 17, 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 17, 2009. Claimant was represented at the hearing by [REDACTED] and appeared and testified.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On March 9, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the month of February 2009, alleging disability.

(2) On March 26, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On June 17, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On June 18, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 3, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's physical findings in [REDACTED] were basically within normal limits. Her hematocrit did not meet the listing level. She has a history of substance abuse. In [REDACTED] the claimant's mental status was basically unremarkable. In [REDACTED] the claimant had some emotional lability but her stream of mental activity was full. With prescribed treatment, the claimant would be capable of simple, unskilled 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, unskilled work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, limited education and a history of unskilled work, MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on September 19, 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 18, 2009.

(8) On September 24, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's physical findings in [REDACTED] and [REDACTED] were basically within normal limits. Her hematocrit was low in [REDACTED] but does not meet the listing because it has to be persistently 30 or less and require frequent blood transfusions. She has a history of substance abuse. In [REDACTED] the claimant's mental status was basically unremarkable. In [REDACTED] the claimant had some emotional lability but her stream of mental activity was full. With prescribed treatment, the claimant would be capable of simple, unskilled work. The new information submitted does not significantly change or alter the previous decision. 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, unskilled work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, limited education and a history of unskilled work, MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 22-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3" tall and weighs 180 pounds. Claimant attended the 7th grade and has no GED. Claimant was in special education as a learning disabled student and stated that she has failed the GED three times. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in 2006 at [REDACTED] making sandwiches and fries.

(11) It should be noted for the record that claimant receives \$180 in Food Assistance Program and that her application was denied in March 2009, at which time the Adult Medical Program did have open enrollment, so the department should determine whether or not claimant is eligible to receive the Adult Medical Program.

(12) Claimant alleges as disabling impairments: hepatitis C, depression, anemia, pneumonia, asthma, bleeding since [REDACTED], dizziness, and a bipolar disorder.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant was admitted in [REDACTED] with a bile leak two days after undergoing laparoscopic cholecystectomy. The claimant had non-cardiac chest pain. She had a negative venous Doppler and echocardiogram. (p. 35) In [REDACTED] the claimant's hematocrit was 35.0. (p. 24)

The claimant presented to the ER in [REDACTED] due to chest pain. Her cardiac evaluation was negative and her chest x-ray was negative. (p. 17) In [REDACTED] the claimant was 5' 3" tall and weighed 192 pounds. She was depressed. Findings were otherwise unremarkable. (New Information from DDS)

A mental status exam dated [REDACTED] showed the claimant's speech was unimpaired. Stream of mental activity was spontaneous and organized. There was no significant evidence of depressive disorder or psychotic symptoms, anxiety disorder, and rule out borderline intellectual functioning. (New Information from DDS)

In [REDACTED], the claimant's stream of mental activity was full but her emotional reactions were labile. She reported that she might hear voices and they might be real. (p. 6) Diagnosis included bipolar disorder that's severe with psychosis, posttraumatic stress disorder, polysubstance dependence, and anti-social personality disorder. (p. 7)

A [REDACTED] psychiatric evaluation showed the claimant's stream of mental activity was full. She was labile and reported she sort of hears voices. She reported racing thoughts and distractibility. She had a history of substance abuse. (New Information p. 7) Diagnosis included bipolar, posttraumatic stress disorder, polysubstance dependence, and anti-social personality disorder. A physical examination dated [REDACTED] was unremarkable. She had a diagnosis of hepatitis C. (New Information, p. 15)

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 testified on the record that she lives with her boyfriend and is single with no children under 18. Claimant takes the bus or rides with someone if she needs to go places. Claimant does cook two times per week cooking things like vegetables and chicken. Claimant grocery shops with her sister one time per month and stated that she needs help because she gets confused and cranky. Claimant does clean her home by sweeping and doing dishes. Claimant can walk five blocks, stand for 15-20 minutes,

and sit for a half an hour at a time. Claimant is able to shower and dress herself, as well as squat, bend at the waist, tie her shoes, and touch her toes. The heaviest weight the claimant can carry is a gallon of milk and she is right-handed and her hands and arms are fine but do get some cramps. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and that she doesn't have any pain medication. Claimant testified that she does smoke 4-5 to a half pack of cigarettes a day and her doctor has told her to quit and that she's trying to quit. Claimant testified that she stopped drinking and smoking crack [REDACTED]. Claimant testified that in a typical day she gets up and smokes, stays up all night, lies back down, gets up and eats, gets mad about things and cries, eats, goes to appointment, and watches television 1-3 hours per day. The Medical Examination Report in the filed dated [REDACTED] indicates that claimant is normal in all areas of examination except that she does have a bipolar disorder and she is 5' 3" tall and weighed 198 pounds. Her blood pressure was 116/72. (pp. 1-2) The Mental Residual Functional Capacity Assessment in the files indicates that claimant is markedly limited in all areas tested. (p. 3)

Claimant has reports of pain in multiple areas of her body as well as she has stated that she has some severe mental impairment; however, there are insufficient corresponding objective clinical findings that support the reports of symptoms and limitations made by the claimant. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant experiences tenderness in her musculature. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. There is insufficient objective psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. The Mental Residual Functional Capacity Assessment in the record is not consistent with the other objective medical

information about claimant's mental activities. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical or mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

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 as a fry and sandwich maker at [REDACTED]. Claimant's past relevant work is light. There is insufficient objective medical/psychiatric evidence contained in the record 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.

Claimant testified on the record that she does have depression and a bipolar disorder.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports, it is documented that claimant used to have heavy use of alcohol as well as crack cocaine usage which would have contributed to her physical and any alleged mental problems. This Administrative Law Judge finds that claimant does not have any real functional limitations in her restrictions of activities of daily living, social functioning, concentration, persistence or pace, or the ability to tolerate increased mental demands associated with competitive work. 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.

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. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that claimant retains the capacity to perform a wide range of simple, unskilled work. Therefore, based upon the claimant's vocational profile of a younger individual, limited

education and a history of unskilled work, MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied.

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. However, the department is ORDERED to reinstate claimant's March 2009 application and, if claimant is otherwise eligible, to determine whether or not she would be eligible to receive the Adult Medical Program and should notify claimant in writing as to her eligibility or lack thereof.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 16, 2009

Date Mailed: November 16, 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.

2009-30330/LYL

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

cc:

