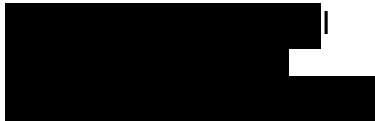


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 200931017  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date:  
October 1, 2009  
Oakland 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 October 1, 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) and retroactive MA-P (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 August 21, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On November 25, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On March 1, 2009, the department caseworker sent claimant notice that her application was denied.
4. On March 21, 2009, claimant filed a request for a hearing to contest the department's negative action.
5. On August 6, 2009, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information in the form of a psychiatric or psychological evaluation.
6. The hearing was held on October 1, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

7. The appointment was scheduled for October 30, 2009 at 10:30 am. Claimant did not attend the appointment and the department has no record of the claimant having provided any additional medical information or showing up for a psychiatric evaluation.
8. The record was closed on June 7, 2011 and this Administrative Law Judge proceeded to the decision with the information contained in the file.
9. On the date of hearing, claimant was a 53-year-old woman whose birth date is [REDACTED]. Claimant was 5'4" tall and weighed 120 pounds. Claimant had an associates degree in business and was able to read and write and had basic math skills.
10. Claimant last worked August 18, 2008 in retail merchandising ordering items. Claimant has also worked at [REDACTED] ordering and setting up displays, and for [REDACTED] doing reports and setting up and building displays. Claimant worked for 17 years in merchandising. Claimant has also worked as a cashier and clerical.
11. Claimant alleges as disabling impairments: depression and knee pain as well as foot problems, a callous under her big toe, diarrhea every day and constant vomiting.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she lives with her husband who supports her and has no children under 18 who live with her. Claimant lives in a house and does have a driver's license. Claimant does drive usually one mile a day to the store. Claimant does cook every day and cooks things like sandwiches and spaghetti. Claimant does grocery shop every day or every other day with no help. Claimant does clean her home by doing laundry, dishes and vacuuming. Claimant testified on the record that she can walk for an hour until it gets painful and that she can stand for a half an hour and can squat and sit with no limits. Claimant is able to bend at the waist, shower and dress herself and tie her shoes as well as touch her toes. Claimant testified she does have some pain on the left side of her back occasionally and her knees are loose and crack. Claimant stated that the heaviest weight she can carry is 15 pounds and she is right handed and her hands and arms are fine. Claimant stated that level of pain on a scale from 1 to 10 is an 8 and with medication, she does not have any pain. Claimant stated that she does smoke a half pack of cigarettes per day and usually drinks two beers per day but does not take any drugs. Claimant testified in a typical day she gets her husband's pills, cooks, cleans, gets some drinks, waits on him constantly for whatever he wants, she goes to the store, pays the bills and watches television four hours per day.

A medical examination report dated October 30, 2008 indicates that the clinical impression is that the claimant is stable and that she can occasionally carry 10 pounds

or less and never carry 20 pounds or more and she can stand or walk at least 2 hours in an 8-hour workday and she does not require an assistive device for ambulation. She is able to use both of her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating. Claimant can operate both foot and leg controls with both feet and legs (pg 23). On October 30, 2008 [REDACTED] evaluation indicates that she was a female age 52 years. Her height was 65" without shoes. Her weight was 122 pounds without shoes. Her blood pressure was 110/60. Pulse equaled 85 per minute and regular respiration 15 beats per minutes. Temperature 98 degrees F. Vision without glasses in the right eye was 20/20 and the left eye 20/15. Her HEENT: Sclera/PERLA normal. Vision is fair without glasses. Fundi normal. Ears were clear. Hearing was normal. The neck was supple. Thyroid not enlarged. JVP normal. Carotid arterial pulsations normal. No carotid bruit. No lymphadenopathy. CVS: PMI is normal in position. Heart sounds are normal. No palpable thrill. No murmur or gallop rhythm. In the chest claimant is comfortable on sitting and supine position. Accessory muscles of respiration are not working. There is no cyanosis. Trachea is central. Chest expansion is normal. No tenderness over the anterior chest wall. Percussion note is resonant. Cardiac and liver dullness are not obliterated. Breath sound is vesicular with no adventitious sounds. Vocal fremitus and resonance are normal. The abdomen was soft. No organomegaly. No tenderness. Bowel sounds are normal. Rectal examination deferred. The skin had no scar, rash or pigmentation. There is a small callous on the sole of the left toe. The extremities: No clubbing, cyanosis, edema or varicose veins. Peripheral pulsations are well palpable in the lower extremities. Both feet are warm. No femoral bruit. In the spine the patient can stand without support. No loss or cervical or lumbar lordosis. No tenderness over spine. All movements lumbar spine are pain free and of normal range. Straight leg raise is 90 degrees on both sides with no complaint of pain over lower back. In the bones and joints she had mild crepitus in the left knee joint. No pain, swelling, limitation of movements, or crepitus in any other joint. No wasting of the muscles around the joints. Grip strength is 5/5 in both hands tested manually. Patient ambulates fairly well without any walking aid. Patient can walk tiptoe and on the heel but had some difficulty walking tandem gait. Can squat and arise from squatting position. Can get up from supine position on and off the examining table without help. Can dress, undress and open door. No loss of dexterity of movements of the fingers. In the nervous system higher functions, cranial nerves, power, tonesensations, cerebellar functions are normal. Deep reflexes are sluggish all over. Gait as mentioned in the bones and joints. Diagnoses was osteoarthritis of the left knee and depression and crying spells. Memory is fair. She was fair in grooming and hygiene. She responded fairly well to the examining situation. Problems are mostly psychological and should be evaluated (pgs 25 and 26).

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: depression 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 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.

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, he 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 person who is closely approaching advanced age at 53 with a more than high school education and a limited work history who is limited to light work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance 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 Maura D. Corrigan, Director  
Department of Human Services

Date Signed: June 8, 2011

Date Mailed: June 8, 2011

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**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 receipt 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/db

cc:

