

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: 2009-32411

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 31, 2010

Kalamazoo 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 March 31, 2010. Claimant personally appeared and testified. Claimant was represented at the [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive 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 April 9, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits to the month of January, 2009, alleging disability.

(2) On May 11, 2009, the Medical Review Team denied claimant's application stating that claimant could perform her prior work.

(3) On May 12, 2009, the department caseworker sent claimant notice that her application was denied, but did not send a copy of the notice to [REDACTED]

(4) On July 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) The hearing was held on March 31, 2010. The department could see that it did not send a Notice of Case Action to [REDACTED] but sent an MSA-2565 form, Facility Admission Notice.

(6) This Administrative Law Judge proceeded with the disability hearing because [REDACTED] was not provided with the proper notice.

(7) The case was sent to the State Hearing Review Team on March 31, 2010.

(8) On March 31, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant was admitted in January 2009 and underwent laparoscopic cholecystectomy due to biliary dyskinesia. In May 2009, she still reported abdominal pain but her examination was unremarkable. She was working at her job as a cleaner with no limitations. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA -P was considered in this case and is also denied.

(9) Claimant is a 56-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 165 pounds. Claimant attended the 9th grade and has no GED, but attended 3 years of trade school. Claimant reads and writes German and English and does have basic math skills.

(10) Claimant is currently employed in a cleaning job, making \$ [REDACTED] per week cleaning a home. Claimant stated that she cleans the bathrooms, mops, dusts, and vacuums; that she has been doing that for approximately the last two years; and she usually works about 7 hours a week. Claimant testified on the record that she could probably work about 4 hours per day. Claimant testified that she was a house wife for 15 years and also worked in a doughnut place as a manager and making cinnamon rolls in a cinnamon store. Claimant testified she receives \$ [REDACTED] per month in a retirement check from her husband, and that she also receives \$ [REDACTED] per month in Food Assistance Program benefits.

(11) Claimant alleges as disabling impairments: intestinal problems, arthritis in her shoulders, back, knees and feet. Claimant does not allege a mental impairment.

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 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 currently working making about \$150 per week cleaning houses. She is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record further indicates that the claimant was admitted in January 2009 due to epigastric pain. Her examination showed she had a systolic murmur in the epigastric region and she was tachycardic, but it was regular. She had tenderness in the upper gastric region and right upper quadrant, but no organomegaly and bowel sounds were positive. There were no focal neurological deficits. (Page 18) She underwent laparoscopic

cholecystectomy due to biliary dyskinesia. (Page 26) In February 2009, the claimant had no complaints. She was back to her regular level of activity. Her examination was unremarkable. (Page 69) In May 2009, the claimant's only complaint was upper right quadrant abdominal pain. Her incisions were healed. She was working at her job as a cleaner with no limitations. (Page 76)

Claimant testified on the record that she can stand for ½ an hour, sit with no limits and walk for about ½ an hour. Claimant testified that she usually walks 1 to 2 miles per day on a good day, with her pit bull that weighs about 70 pounds. Claimant is able to shower and dress herself and tie her shoes and bend at the waist and squat, but not touch her toes. Claimant testified that her level of pain on a scale from 1 to 10 without medication was a 10, and with medication is a 5 to a 6. Claimant testified that she is right-handed and that she does have arthritis in her hands and arms, and she has bunions and her feet hurt. Claimant testified that the heaviest weight she could carry was a gallon of milk, but she does not smoke, drink or do drugs. Claimant did testify that in her cleaning job she does the bathrooms, mops, dusts and vacuums.

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. This Administrative Law Judge finds that claimant's impairments do not meet duration. In addition, claimant is working at her regular job. 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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. 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. Claimant is currently working and therefore, is functioning in her occupation. 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 are no allegations of medical/psychiatric disorders or limitations. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2 and has not established a severe mental or physical impairment. Claimant's impairments do not meet duration. 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 is currently working at her cleaning job cleaning bathrooms, mopping, dusting and vacuuming and working approximately 7 hours per week, earning \$150 per week. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she is currently engaged in. 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 for the sake of argument 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 unable to continue her current 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 is currently performing light work because she does clean houses and earns \$150 per week doing that. 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 and is currently performing light work.

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

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 claimant is currently working and has therefore not established that she has a severe impairment or that her impairments meet duration. Claimant is disqualified from receiving disability at Step 2, Step 3, Step 4 and Step 5. The department has established this case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Adm
Departm

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

Date Signed: June 28, 2010

Date Mailed: June 29, 2010

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/cv

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