

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: 2009-688
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 13, 2008
Ingham 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 November 13, 2008. 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 State Disability Assistance (SDA)?

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 May 5, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.

(2) On July 25, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On July 31, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On September 18, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 15, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant had a significant bout of depression after she was no longer receiving treatment or taking medications. She was hospitalized and started on medications after which her condition improved. The claimant should be capable of performing simple, unskilled work. With continued treatment/therapy and medication, her condition may improve even more. Incidental notice is made of the fact that at the physical consultative exam, the claimant complained of a backache after playing baseball. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. 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 unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, high school equivalent education and a history of semi-skilled work, MA-P is denied using Vocational Rule 204.00 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

(6) The hearing was held on November 13, 2008. 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 February 12, 2010.

(8) On February 18, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant had a significant bout of depression after she was no longer receiving treatment or taking medications. She was hospitalized in April 2008 and started on medications after which her condition improved. Her mental status in October 2009 showed she was logical and organized. There was no evidence of a form of thought disorder. 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 unskilled work. Therefore, based on claimant's vocational profile of a younger individual, high school equivalent education and a history of semi-skilled work, MA-P is denied using Vocational Rule 204.00 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

(9) On the date of hearing, claimant was a 30-year-old woman whose birth date is [REDACTED]. Claimant was 5' 3 1/4" tall and weighed 120 pounds. Claimant attended one year of college. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in April 2007 as a nurse's assistant. Claimant has also worked as a home health care person and at [REDACTED] as a hostess.

(11) Claimant alleges as disabling impairments: a bi-polar disorder, depression, anorexia, lower back pain, anxiety attacks and memory problems.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has no limits upon her ability to walk, no limits upon her ability to stand, sit, squat or bend. Claimant is able to shower and dress herself, tie her shoes, and touch her toes. Her knees were fine, but her lower back was painful. Claimant testified that she could carry 30 to 40 pounds and on a repetitive basis, she could carry 20 pounds. The claimant was right-handed and her hands and arms were fine and her legs and feet were fine. Claimant testified that she does smoke 5 to 8 cigarettes per day and her doctor has told her to quit but she is not in a smoking cessation program, and that she did drink two “fuzzy navals” a day and her doctor told her to quit. Claimant testified she stopped smoking marijuana when she was 17.

Hospital records of April 16, 2008, reported the claimant to be having significant symptoms of depression. She had no recurrent treatment provider and no longer had medication. At discharge, her condition had improved somewhat, although she continues to have some pressured speech. Axis I diagnosis was major depressive disorder, recurrent. (page 5)

A psychological consultative examination of June 5, 2008, indicates the claimant reported her medications were helping her. Testing performed reported the claimant to experience social discomfort, social avoidance and hypomanic features but no severe levels of depression. She exhibited average social judgment as well as average fund of information.

Thought process was normal and her agoraphobia was improving. She was once again noted to have pressured speech. (page 32)

An activities of daily living form completed right after the hospitalization in April 2008, indicates she was performing some activities such as chores, grocery shopping for and with her ex-husband, and visiting. She also reported that she read books and bowled, as well as attended a support group. (page 40)

A mental residual functional capacity assessment, dated September 2008, showed the claimant had bi-polar disorder, panic disorder, and Attention Deficit Hyperactivity Disorder. The only mental status findings included the claimant was depressed, had poor concentration and poor motivation.

A mental status report, dated October 2009, showed the claimant's speech was understandable. She was cooperative, verbal, friendly and engaged in the assessment process. She was logical and organized and responsive to questions. She denied hallucinations or delusions or being persecuted. Her diagnoses included Bi-polar I disorder, Attention Deficit Hyperactivity Disorder, panic disorder without agoraphobia, and alcohol abuse. (Records from DDS)

An October 22, 2009, Mental Status Examination indicated that claimant appeared to have good contact with reality. Her speed of motor activity was mildly hyper. She was pleasant. She reported sometimes being dependent upon others for some of her basic needs. She did not appear to be exaggerating or minimizing her symptoms. She was logical and organized and responsive to the questions asked of her. She denied having hallucinations or delusions. She denied being persecuted. She denied others controlled her thoughts or that she had any unusual powers. She did report feeling worthless, hopeless and guilty. She reported somatic difficulties including problems with sleep, difficulties with her appetite and at times fatigue and weakness.

She reported that her level of depression on the day of the assessment was a 4 on a 0 to 10 scale, where a 10 equals the most depression a person could possibly experience. She reported her level of anxiety was a 6 and her level of anger was a 0. Her self-ratings appeared to be accurate. She was oriented to person, time and place. She remembered 4 digits forward and 4 digits backward. She remembered 1 of 3 objects after a 3-minute delay. When asked to name the recent presidents of the United States in correct order, she gave Barak Obama, George Bush and Clinton. When asked to name the past two governors of Michigan, she gave Granholm and she didn't know about the other. She gave her birth date as [REDACTED] and stated she was 31, which was correct. When asked to name five cities in the United States and five well known, living Americans, she did so easily. In her calculations, she did serial 7's from 100, 93, 86, 79, 72, 65; 3 plus 4 equals 7, 9 plus 6 equals 15, 4 times 5 equals 20, 9 divided by 3 equals 3, and 8 times 7 equals 52. When asked the meaning of the grass is always greener on the other side of the fence, she stated, "It's not always better somewhere else." When asked what don't cry over spilled milk meant, she indicated, "Don't sweat small stuff." A bush and a tree are alike "because they are both plants" and a bush and a tree were different because "they had different shapes." When asked how an orange and a banana were alike, she said, "They are likely to grow fruit" and how are they different, she stated, "the colors." When asked what she would do if she were the first to see a fire in a movie theatre, she responded, "yell, fire." When asked what she would do if she saw a stamped, addressed envelope on the sidewalk, she responded, "mail it." The medical examiner indicated that it would be difficult for her to consistently function well in a work setting because of the reciprocal nature of her mood disorder, that she needs to discontinue her episodic use of alcohol. Her current GAF was 52 and her best GAF last year was 52. Her prognosis was poor, and she would not be able to manage her own benefit funds. (DDS Examination, pages 4,5)

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 which has kept her from working for a period of 12 months. Claimant has reports of pain in her back; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant did testify that she does not have any physical limitations. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

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 resulting from her reportedly depressed state or bipolar state. The Mental Residual Functional Capacity Assessment in the record indicates that claimant was markedly limited in some areas, but once she was no longer hospitalized she had improved. In addition, at the October 2009 mental status examination, all findings were basically normal. The examiner indicated that because of the nature of claimant's impairment, she should refrain from alcohol use. 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's activities of daily living do not appear to be very limited and she did state that she lives with a girlfriend and she

has a driver's license and drives daily to take the children to school. Claimant testified that she has joint custody of three children who are ages 12, 8 and 10, and that she cooks things like spaghetti, sloppy joes and grocery shops, as well as cleans her home by dusting, sweeping, and doing dishes. 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 as well as her own testimony, it is documented that she had alcohol use which would have contributed to her physical and any alleged mental problems.

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 denied her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was light work. As a nurse's assistant and a hostess, does not require strenuous physical exertion, 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, 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 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 a 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 at least light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. Applicable herein is the Drug Abuse and Alcohol (DA&A) legislation, Public Law 104-121, Section 105. The law indicates that individuals are not

eligible and/or not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that even if claimant did meet the disability standards, she does not meet the statutory disability definition under the authority of the DA&A legislation because her substance abuse is material to her alleged impairments and alleged disability.

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. This Administrative Law Judge finds that claimant does continue to smoke, despite the fact that her doctor has told her to quit.

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

Claimant is not in compliance with her treatment program and is, therefore, also disqualified from receiving disability.

Under the Medical Vocational Guidelines, a younger individual (age 31) with a high school education and an unskilled work history, who is limited to light work, is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under

the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 and State Disability 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 this 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: June 04, 2010

Date Mailed: June 7, 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.

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cc:

