

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: 2010-10855
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 3, 2010
Wayne 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 February 3, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

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

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 June 8, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On August 28, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On September 10, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On November 5, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 17, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing her past work per 20 CFR 416.920(e) and commenting that the claimant retains the residual functional capacity to perform at least unskilled medium work. The claimant's past work was unskilled light/medium, as she describes it. The claimant retains the capacity to return to past relevant work.

(6) Claimant is a 57-year-old woman whose birth date is [REDACTED] Claimant is 5' 5" tall and weighs 228 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write some and does have basic math skills.

(7) Claimant last worked in 2005 a home health care aide and claimant has also worked as a dietary aide and in housekeeping.

(8) Claimant lives with her son and 14-year-old nephew, both of whom receive SSI benefits.

(9) Claimant alleges as disabling impairments: hypertension, diabetes mellitus, back pain, shortness of breath, high cholesterol, arthritis, and depression.

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 not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a February 13, 2009 medical review indicates that the claimant was alert, oriented x3. Her height was 5' 5" tall and her weight was 260 pounds. Her blood pressure was 140/90. Visual acuity was 20/30 for the right eye and 20/20 for the left eye. Both eyes were 20/20 with eyeglasses. HEENT: Pupils were equal, round and reactive to light. Extraocular movements were full. No icterus. No conjunctival pallor. The fundi were benign. No exudates or papilledema noted. There is no JVD. No carotid bruits. No cervical lymphadenopathy. No thyromegaly. The throat is clear. There is no thrush noted. The tongue is central. The neck is supple with full range of motion. No lesions noted on the tongue. The chest and lung were clear to auscultation bilaterally. The cardiovascular: S1 and S2 were regular. No murmur or gallop is noted. PMI is not displaced. In the abdomen, the abdomen is obese, soft and non-tender. No masses were felt. Bowel sounds were normal. There was no organomegaly. In the musculoskeletal area, the range of motion of the C Spine is full. The range of motion of the thoracolumbar spine, forward flexion of 0-50. Extension is 0-10 degrees. Bilateral flexion is 0-20 degrees. There is no S1 joint tenderness. There is no mid-line spine tenderness. Bilateral knees, hips and ankles have full range of motion. Bilateral shoulders, elbows and wrists have full range of motion. The dorsalis pedis is bilaterally 2+. No pedal edema. No clubbing or cyanosis. Capillary refill is intact and normal. Gait is normal. No cane is used by the patient. No limp noted. In the neurological: Alert and oriented to time, person and place. Speech is normal. Cranial nerves II-XII are intact. Memory: Claimant was able to tell birth date and current president's name. Babinski is negative. Romberg test is negative. Finger-

to-nose test is normal. DTRs are bilaterally symmetrical at 2+. The muscle power was 5/5 in all extremities. Pain and touch are intact bilaterally, symmetrical and equal. The patient can get off the table and chair without any assistance. The impression was hypertension, diabetes clinically well controlled, and obesity with chronic back pain. (Pages 3-4)

A physical residual functional capacity assessment in the record indicates that claimant is alleging arthritis, muscle spasm, swelling of feet, constant pain, hypertension and diabetes mellitus. The MER was reviewed. The claimant's AP has treated her for hypertension, hyperlipidemia and diabetes mellitus. There is no documented evidence of end organ damage from these diseases. She had normal adenosine stress test and ejection fraction. There was no report of joint or muscle pain or arthritis with chronic, constant pain noted in the MER reports. She was seen in the ER for right great toe pain and swelling. X-rays of the right toe in November 2007 and November 2008, were normal. She was seen in the ER in May 2007, after an assault. X-rays of the cervical spine showed some straightening due to spasm. Otherwise, normal examination. CXR was normal. CE in March 2009, normal range of motion of cervical spine. At CE, she complained of low back pain. Range of motion of dorsolumbar spine was 0-50 degrees. There was no mid-line or S1 joint tenderness. Neurological examination was normal. Gait was normal. Grip and dexterity were normal. Range of motion of peripheral joints was normal. Height was 55" and weight was 226 pounds, and her BMI is 37.6. X-rays of the lumbar spine in May 2009 were normal. Activities of daily living: In January 2009, claimant reported that she was unable to lift irons, comb her hair and needed help getting off the toilet.

A May 26, 2009 medical examination report showed that the claimant has a history of hypertension and diabetes mellitus. She has no evidence of end organ damage that led to her hypertension. X-rays of the lumbar spine are normal. Range of motion of the spine and peripheral joints, grip strength and dexterity is normal. Gait is normal. She is obese with BMI

of 37.6. ADLs, as noted are reported as significantly limited. However, her statements regarding her limitations are not medically supported and are considered not credible. (May 26, 2009, Residual Functional Capacity Assessment)

A May 8, 2009 examination of the lumbar spine showed AP and lateral views of the lumbosacral spine reveal normal osseous structures. The disc spaces were well preserved. No evidence of fracture, osteolytic or osteoblastic activity is demonstrated. (P. 1A)

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 a duration of at least 12 months. There is no 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. 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.

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 mental limitations resulting from her reportedly depressed state. There is a no mental residual functional capacity assessment in the record. 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 and was able to answer all of the questions at the hearing. Claimant was responsive to all the questions asked of her. 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, 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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'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.

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 medium, light or sedentary work even with her impairments. The department has established this case by a preponderance of the evidence.

