STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No: 2010-14750
Issue No: 2009; 4031
Case No: [redacted]
Load No:
Hearing Date:
March 16, 2010
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 16, 2010. 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 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 April 10, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.

(2) On August 26, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On September 14, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On December 7, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 14, 2010, the State Hearing Review Team again denied claimant's application stating: claimant is capable of performing other work

in form of medium work per 20 CF R 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.29.

(6) The hearing was held on March 16, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information wa s submitted and sent to the State Hearing Review Team on June 11, 2010.

(8) On June 16, 2010, the State H earing Review Team again denied claimant's application stat ing that claimant has a hist ory of cardiac stent placement. She is able to ambulate without assistance but d id have a mildly antalgic gait. She had s ome diminished sensation in the left thigh, but no other significant neurologic abnormalities noted. She has a history of cocaine abuse wit h post traumatic stress disorder and bi-polar an d anxiety. In September 2009, she was a good historian and her affect was pleasant. The claimant's impairments do not meet/equal the intent or severity of a social security listi ng. The medical evidenc e of record indicates that the claimant retains t he capacity to perform a wide range of simple u nskilled light work. In lieu of detailed work hist ory, the claimant will be ret urned to other work. T herefore, 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 202.17 as a guide. Retroactive MA-P was considered in th is case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would not preclude work ac tivity at the above stated level for 90 days.

(9) Claimant is a 36-year-old woman whose birth date is [redacted] Claimant is 5' tall and weighs 19 0 pounds. Claimant rec ently gained 50 pounds. Claimant att ended the 7th grade and has no GE D. Claimant is able to read and write and can add, subtract, and count money.

(10) Claimant last worked in 2007 c utting fruit at [redacted] Claimant has als o worked as a cashier and has failed work attempts and has been fired from every job she has ever had. .

(11) Claimant alleges as disabling impairments: co ronary artery disease, angina, hypertension, neuropat hy, bi- polar disorder, anxiety attacks, muscle pr oblems, scolios is, myocardial inf arction in 2008, fibromyalgia, chest pain, panic attacks every other day, memory problems, concentration problems, and depression.

## CONCLUSIONS OF LAW

heading

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 in 2009, the claimant reported 3 cardiac catheterizations with coronary artery stent placements (A52). She ambulated un-assisted but had a mildly antalgic gait, but no apparent limp. There were no sensory, motor or reflex abnormalities of the distal lower extremities. However, there

was an area of diminished sens ation to pin pr ick over the lateral aspect of the left thigh from the hip to the knee. T here was increased left leg pain with forward flexion. There was tenderness of the L5-S1 midline and left sciat ic notch . Straight le g raise wa s positive (p. A53). Respiratory and cardio vascular examinations were wit hin normal limits. She was a good histor ian and had a pleasant affect (p. A54). The claimant presented to the ER in October 2009, due to chest pain. Her examination was unremarkable. EKG was normal. Chest x-ray showed no ac ute diseas e (p. A27). Clinical impression was atypical chest pain and bronchitis (p. A31).

A June 20, 2008, [redacted] report indi cates that claimant had EKG which had normal sinus rhythm, rate 82, ST elevation N1, AVL, V4-V5. Chest x-ray showed no infiltrates. CT of the chest, myovascular c ongestion and som e atelectasis. The CT of the brain was unremarkable. Cs pine, no fracture or subluxation, small lucency in c4 probable cyst. Recommend MRI when stable (p. A1).

A June 20, 2008, consultation indicates that cl aimant has a history of poly substance abuse on chronic basis and some prior cocaine use (p. A9). A physical June 19, 2008, indicates that claimant had a blood pressure of 150/110, pulse rate of 132. Her neck was supple jugular venous distension. In her heart she had tachycardia wit h no gallop and no murmur. Her lungs were clear and her extremities showed no edema (P. A11).

An October 2, 2009, emergency depar tment clinical report indi cates that claimant came to the hospital with difficulty breathing, complaining of coughs, chest pain and congestion. A physic al examination indicat ed that her appearanc e was a lert, she was oriented x3 and in no ac ute distress. Her vital signs were reviewed and app eared to be correct. E yes: the pupils were equal, rou nd and reactive to light. Eyes had norma l inspection. The ears was normal, nose was normal, pharynx was normal. The neck had normal ins pection and the neck was supple. CVS was normal heart rate and rhythm. Heart sounds were normal. Pulses were normal. Resp iratory rate, there was no respiratory distress. Moderat ely decreased air movement in the bases bilat erally. The chest was non-tender. No acces sory muscl e use, chest pain reproduced on physic al exam, rales, rhonchi or wheezes. The abdomen was soft and non-tender. The skin had no rash, the extremities exhibi ted normal range of motion. No lower extremity edema. Claimant was oriented x3. She had an EKG show normal si nus rhythm. Rate of 83, normal P waves. No rmal QRS comple x. No rmal a xis. Normal ST and T waves. Th e chest x-ray revealed no acute disease. (p. B11)

Claimant is a 36-year old woman whose birthdate is [redacted] Claimant testified that she does cook every couple of days and usually cooks microwave meals. Claimant testified that her driver's license is suspended and she usually gets rides. Claimant testified that she live with her boyfriend's parents. Claimant testified that she doesn't grocery shop, the people that she lives with grocery shops for her, but she does do the dishes and dusts. She reads 2 hours a day and watches TV 4 hours per day. Claimant testified that in a typical day she gets up and cleans a little bit and she reads and watches the news on the TV and reads more. Claimant testified that she can walk 500 feet, sit for a half an hour, stand for an hour, but not squat or touch her toes.

Claimant testified that she can bend at the waist, and her knees are fine, her back hurts, but her hands are fine and she left leg and feet pain. Claimant testified that her level of pain on a scale of 1-10 without medication is an 8 and with medication is a 5 and she is right handed. Claimant testified that she used to smoke a pack of cigarettes a day and that she quit smoking 3 weeks before the hearing and she used to drink one time per month and she stopped drinking and using cocaine in January 2009. Claimant testified that she is able to shower and dress herself and bathe in a bathtub.

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: panic attacks and anxiety as well as bi-polar and depression.

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, 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 comb ination of impairments which prevent her from performing any level of work for a period of 12 mont hs. 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/ps ychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it w ould prevent claimant from worki ng at any job. Claimant was able to answer all the questions at the hearing and was responsive t o the questions. Claimant was oriented to time, person and plac e during the hearing. Claimant's c omplaints of pain, while pr ofound and credible, are out of proportion to the objective medical ev idence c ontained in t he 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 establis h that claimant has no residual functional capacity. Clai mant is dis qualified fr om re ceiving disabilit y 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 y ounger indiv idual (age 36), with a les than high school education and an unskilled work hi story who is limite d to light work is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whethe r Drug Addiction and Alcoholism (D AA) is material to a person's disability and when benefits will or will not be a pproved. The r egulations require the disab ility a nalysis be completed prior to a determination of wh ether a person's drug and alc ohol use is material. It is only when a per son 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 materi ality of DAA to a person's disability.

When the record contains ev idence of DA A, a determination m ust be made whether or not the per son would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determi ne what, if any, of the physical or mental limitations would remain if t he person were to stop the use of the drugs or alcoho l and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, alcohol abus e. Applicable hearing is the Drug Abuse and Alc ohol (DA&A) Legislation, Public Law 104-121, Sect ion 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicate s that indiv iduals are not eligible and/or are 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 ev idence on the whole record, this Administrative Law Judg e finds that claimant does not meet the statutory disabilit y definition under the authority of the DA&A Legis lation because her subs tance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continued to smoke up until 3 weeks before her hearing despite the fact that her doctor has told her to quit. Claimant was 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'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.

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 and/or State Disability 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 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 its 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: July 28, 2010

Date Mailed: July 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/alc

cc: [redacted]