

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: 2010-14889
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 2010
St. Clair 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 June 2, 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)?

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 October 15, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.

(2) On November 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform her prior work.

(3) On November 30, 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 4, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The evidence supports that the claimant would retain the ability to perform light exertional tasks without psychiatric limitations. The claimant retains the physical residual functional capacity to perform light exertional work with no psychiatric limitations. The claimant's past work was sedentary and skilled. Therefore, the claimant retains the capacity to perform their past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. State Disability was not applied for by the claimant at this time. Listings 1.04, 11.14 and 14.09 were considered in this determination.

(6) The hearing was held on June 2, 2010. 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 June 4, 2010.

(8) On June 4, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The case was returned by the Office of Administrative Hearings with new evidence. There are prior Medical Review Team denials, November 20, 2009 and April 13, 2010, and a State Hearing Review Team denial of January 14, 2010, all returning claimant to their past relevant work. Review of the newly submitted evidence does not alter these prior determinations. Per the evidence submitted, it is reasonable that the claimant will retain the ability to perform light exertional tasks. The claimant retains the physical residual functional capacity to perform light exertional work. The claimant's past work was of a sedentary skilled nature. Therefore, the claimant retains the capacity to perform their past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P

was considered in this case and is also denied. State Disability was not applied for by the claimant. Listings 1.04, 11.14 and 14.09 were considered in this determination.

(9) Claimant is a 60-year-old woman whose birth date is [REDACTED] Claimant is 5' tall and weighs 230 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2008, self-employed, recruiting people for [REDACTED] Claimant work for the [REDACTED] [REDACTED] in sales, and [REDACTED] as a sales person recruiter.

(11) Claimant alleges as disabling impairments: rheumatoid arthritis, fatigue, neuropathy, degenerative disc disease, depression, fibromyalgia, angina, asthma, bronchitis, Chronic Obstructive Pulmonary Disease, osteoporosis, blood clots, depression and dementia.

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

The objective medical evidence on the record indicates that claimant testified on the record that she cooks three to four times per week and cooks things like hamburg, hotdogs and baked chicken. Claimant testified that she does have a driver's license and she drove herself to the hearing, and she usually drives two times per week. Claimant testified she does grocery shop one time per week, and she needs help carrying groceries and putting them on the conveyer belt. Claimant testified that she does do the dishes, and she watches television six hours a day.

Claimant testified that she can stand for 10 minutes, sit for 1 hour at a time, and could walk 100 feet. Claimant testified that she cannot tie her shoes but she can touch her toes. Claimant stated that her level of pain on a scale from 1 to 10 without medication is a 10, and with medication is a 7. Claimant testified that she is right-handed and has neuropathy in her legs and feet, and hands and arms. Claimant testified that the heaviest weight she can carry is 10 pounds and that she goes to the doctor once per month.

A hospital admission of [REDACTED] indicates that claimant came to the hospital for acute chest pain. She was awake, alert and without any acute respiratory distress. Her vital signs were negative, 97.0 temperature, 108/61 for blood pressure, 79 heart rate, 18 respiratory rate, and saturation 96% on room air. Her HEENT: pupils were equal, round and reactive to light and accommodation. Extraocular movements were intact. The lungs had decreased breath sounds bilaterally. In the cardiovascular system, there was normal S1 and S2, with no rubs or no gallops. The abdomen was soft and non-tender, no hepatosplenomegaly. The bowel sounds were positive. No rebound. The extremities had no edema, no clubbing and no cyanosis. She was awake and alert without any focal deficits. The assessment was hypertension, morbid obesity, macrocytic anemia, acute chest pain, and unstabilized angina. Claimant was discharged January 20, 2010. (New Information, p. A2)

A neurology consultation report of January 20, 2010, indicates that claimant was 60" in height and weighed 218.6 pounds. Her blood pressure was 130/68. Her heart rate was 80. Respiratory rate was 18. Temperature 97.4. She was well developed and well nourished, and appeared in no acute distress. Cranial nerves II-XII are intact. Strength was 5/5 in all four extremities, no pronator drift. A sensory exam showed normal light touch, sharp touch, vibration and joint position sensation. Reflexes: DTR's 2/5, plantar reflex showed downgoing toes

bilaterally. Cerebellar function: FNF WNL bilaterally. Gait: WNL. Mental status: alert and aware and oriented to person, time and place. (Page A3)

An ultrasound of the carotid, dated November 9, 2008, indicates that there is severe stenosis in the right brachiocephalic artery. (Page 59)

An x-ray of the thoracic spine, dated June 1, 2009, indicates mild degenerative changes at multiple thoracic levels. There was no evidence of fracture, dislocation or focal bone destruction. Mild degenerative changes with osteophyte formation are seen at multiple thoracic levels, primarily involving the mid to lower levels. The vertebral bodies and heights were maintained and aligned. (Page 3)

An x-ray of the lumbar spine, completed June 1, 2009, indicates degenerative changes at the levels of L2-3, L4-5 and L5-S1. Grade I spondylolisthesis of L4 over L5 and atherosclerosis of the abdominal aorta. There is minimal disc space narrowing at the level of L5-S1. There is extensive calcification of the abdominal aorta. Surgical clips are noted in the right upper quadrant, which may be consistent with prior cholecystectomy. (Page 4)

An EGD procedure of April 28, 2008, indicates that there was evidence of mild chronic gastritis. Multiple biopsies were obtained. There was no evidence of gastric bleeding. The stomach was otherwise normal. The duodenum appeared normal. There were no complications associated with the procedure and the impression was a small sliding hiatal hernia. (Page 6)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or

x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

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 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 combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is

disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

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 department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED. Claimant's impairments do not meet duration at Step 2, claimant's impairments did not meet the level for disability at Step 3, Step 4 or Step 5. Claimant should be able to perform her prior work even with her impairments.

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

Adm
Departm

Date Signed: July 1, 2010

Date Mailed: July 2, 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.

2010-14889/LYL

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cc:

