

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: 2010-15653
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2010
Bay 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 February 25, 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 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 27, 2009, claimant filed an application for Medical Assistance, and retroactive Medical Assistance benefits.
- (2) On July 30, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 201.27.

(3) On August 27, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On November 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 26, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient information and requested an internist examination and a psychiatric examination.

(6) The hearing was held on February 25, 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 March 18, 2010.

(8) On March 22, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis:

The claimant is alleging disability secondary to diabetes, hypertension, high cholesterol, shortness of breath, obesity, hand pain and mental issues. There is no evidence of shortness of breath. Hypertension and cholesterol are controlled. There is evidence of poorly controlled insulin-dependent diabetes. The best control is noted, per medical source's opinion in particular, to be related to an insulin pump that claimant is unable to afford. There is no evidence of a diabetic sequelae per purchased examination. There is some reduced range of motion. The claimant was evaluated and noted for major depressive disorder and learning disorder. The claimant brought a cane to the psychiatric evaluation that was not noted to be needed by the evaluator. The previous day at the physical examination, the claimant did not bring an assistive device and it was noted that one was not needed. The claimant has severe conditions that do not meet or equal listing level criteria for disability. It is reasonable that the claimant would be limited to performing tasks of a light exertional, simple and repetitive nature. 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 light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of a

33-year-old, with a high school education and a history of no gainful employment, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. State Disability was not applied for by the claimant. Listing 1.02, 1.04, 3.01, 4.04, 9.08, 12.02, 12.04, and 12.05 were considered in this determination.

(9) Claimant is a 33-year-old woman whose birth date is [REDACTED] Claimant is 5' 3" tall and weighs 288 pounds. Claimant has a high school education and is able to read and write and does have basic math skills.

(10) Claimant alleges as disabling impairments: diabetes, hypertension, high cholesterol, shortness of breath, obesity, hand pain and mental issues.

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 no gainful work history. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a February 17, 2010, [REDACTED] examination indicates that the patient was cooperative in answering questions and following commands. The patient's immediate, recent, and remote memory is intact with normal concentration. The patient's insight and judgment are both appropriate. The patient provides a good effort during the examination. In the vital signs, the blood pressure in the left arm was 126/80. Pulse equals 100 and regular. Respiratory rate was 18. Weight was 290 pounds. Height was 63" without shoes. Her skin was normal. Ears and eyes: She had visual acuity in the right eye equaling 20/40 and the left eye equaling 20/40 without corrective lenses. Pupils were equal, round and reactive to light. The patient can hear conversational speech without limitation or aids. The neck was subtle without masses. The chest

had diminished air entry with upper airway rhonchi present. There is no accessory muscle use. The heart: There was regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen, the pannus was below the pelvic brim. There was no organomegaly or masses. Bowel sounds were normal. In the vascular area, there was no clubbing, cyanosis, or edema detected. The femoral, popliteal, dorsal pedis, and posterior tibial pulses are decreased bilaterally. Hair growth is present on the lower extremities. The feet were warm and normal color. There were no femoral bruits. In the musculoskeletal area, there was no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The patient could pick up a coin, button clothing, and open a door. The patient had mild difficulty getting on and off the examination table, and mild difficulty heel and toe walking, and mild difficulty squatting and mild difficulty hopping. In her range of motion, she had normal range of motion in the cervical spine, the dorsolumbar spine, the shoulders, the elbows, the hips, the knees, and the ankles and wrists, as well as the hands and fingers. In the neurological area, cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pin prick. Reflexes were intact and symmetrical. Romberg testing was negative. The patient walked with a wide-based gait without the use of an assistive device. The conclusions were that claimant had diabetes, which appears to be stable now that she has an insulin power; however, weight reduction would be a benefit. There were no findings of sequelae, however, she may have underlying sleep apnea due to her upper airway rhonchi. Her current prognosis is fair to guarded. (New Information, pages A2-A5)

An evaluation, performed February 18, 2010, indicates that claimant's posture and gait were unremarkable. Her clothing was clean. Her hygiene was good. Her mood was depressed. Mannerisms were cooperative. She denied any difficulty finding the location, but arrived at the appointment 15 minutes late. Her thoughts were spontaneous and well-organized. There were no

problems in pattern or content of speech. She denied the presence of any auditory or visual hallucinations, delusions, obsessions, persecutions or unusual powers. She reported occasional feelings of worthlessness, but no suicidal ideation. She reported sleep patterns that are restless and allow her to sleep only four hours per night. She was transported to the evaluation by her husband. She reported a weight of 288 pounds and a height of 5' 3". She appeared her stated age. Posture and gait were unremarkable. She used a cane to walk into the evaluation even though she did not seem to need it. Clothing was fair. Mood was depressed. Mannerisms were cooperative. Her thoughts were spontaneous and well-organized. No problems in the pattern or the content of her speech were noted. She was oriented x3. She correctly stated the year was 2010 and her current address was [REDACTED]. She was able to recall 5 digits forward and 3 digits backward in immediate memory. In recent memory, she was able to recall only 1 out of 3 objects after a 3-minutes interval. In past memory, she named the current president as Obama and the previous president as Bush. She was unable to identify the president prior to Bush. She correctly stated her birth date as [REDACTED]. When asked to name five large cities, she names Los Angeles, Detroit, Little Rock, Saginaw, and Grand Rapids. She names current famous people as Sandra Bullock, and Point of Grace. When asked to identify current events, she identified the war and Obama. In calculations, she was unable to perform serial 7 calculations. Performance on serial 3's was as follows: 100, 97, 94, 91, 88, 85 and 82. Performance on single digit calculation test was as follows: 9 plus 8 equals 17, 12 minus 7 equals 5, 5 times 5 equals 25, and 8 times 7 equals 56. She was unable to calculate 36 divided by 4. When asked the meaning of the saying, the grass is always greener on the other side of the fence, she replied, "there is always something better." When asked the meaning of the saying, don't cry over spilled milk, she stated, "don't see the little things." When asked how a bush and a tree are alike, she replied, "they both have leaves and grow." When asked how they are different,

she replied, “one is small.” When asked what she would do if she found a stamped, addressed envelope lying on the sidewalk, she replied, “pick it up and put it in the mailbox.” When asked what she would do if she discovered smoke or a fire in a theater, she responded, “yell fire and get out.” Claimant did state that she had a learning disorder, but there were no assessments to substantiate this diagnosis. She was diagnosed with major depressive disorder, chronic obesity and diabetes, and her GAF equaled 70. (Exhibit B1-B5)

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; 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 as disabling mental impairments: depression and problems with comprehension.

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 a 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 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.

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.

