

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: 2010-17532

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 16, 2010

Genesee 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 March 16, 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 October 30, 2008, claimant filed an application for Medical Assistance and State Disability Assistance, alleging disability.

(2) On May 15, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.

(3) On October 30, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On January 21, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 16, 2010, the State Hearing Review Team again denied claimant's application stating: Insufficient evidence and requested a complete physical examination and a complete mental status examination.

(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 was submitted and sent to the State Hearing Review Team on May 18, 2010.

(8) On May 20, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant had right-sided hemiparesis secondary to left parietal lobe hematoma in October 2008. In January 2009, she was obese and had slightly decrease sensitivity to light touch in the right foot. Her examination was otherwise basically unremarkable. The doctor indicated her low energy could be related to obesity. Two examinations were scheduled for the claimant but she did not attend either because she was in Florida. The State Hearing Review Team reviewer stated, "I do not know if she relocated to Florida or not. However, based on the information in the file, the claimant would be capable of at least simple unskilled light work. 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 at least simple unskilled light work. The claimant may be able to return to one of her past jobs, however, in lieu of detailed work history, she will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age at 53, limited education and a history of unskilled work, MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant failed to attend two examinations which were scheduled for March 22 and April 1, 2010.

(10) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 250 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write but has low reading comprehension because she quit school at 16 and got married and she does have basic math skills and is able to count money.

(10) Claimant last worked in 2007 painting and prepping. Claimant also worked as a cashier and stock person and as a waitress, and as a clerk. She is supported by her husband and mother.

(11) Claimant alleges as disabling impairments: Cerebrovascular accident (CBA) and paralysis, hypertension, tracheobronchitis, depression, and anxiety, as well as right-sided weakness, a stroke in 2008, fatigue weakness and left knee problems.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R

400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant was scheduled for a medical appointment on March 22 and April 1, 2010. Claimant did not attend either medical appointment. A January 29, 2010 internal medicine examination indicates that claimant was awake and oriented x3 in no acute distress and resting comfortably in examination room. Her blood pressure was 118/77. Her pulse was 65. Weight is 166 pounds compared to 148 pounds nine months ago. Her BMI is 40. Her skin had no rashes. Her HEENT: Head is normocephalic and atraumatic. Pupils were isochoric and reactive to light bilaterally. Ocular movements were intact. Ears and nose are normal at external inspection. No discharges. No pain. Mouth shows well-hydrated and no lesions. Her neck: was central and supple. No masses are felt. Thyroid is not palpable. The chest was symmetric with no excessive respiratory muscle use. The lungs were clear to auscultation. No crackles. No wheezing. In the cardiovascular area, there were no

thrills. S1 and S2 are distant and rhythmic. Difficult to assess murmur. Peripheral pulses are felt good at upper and lower extremities. The abdomen was obese. Bowel sounds were present. The abdomen was soft with no pain or organomegaly and the extremities there was mild non-pitting edema on the legs bilaterally. There were no deformities. In the neurologic area, muscular was adequate in upper and lower extremities symmetrically. Sensitivity to light touch was adequate except for the right foot which was slightly decreased. Deep tendon reflexes were normal and reactive in upper and lower extremities. Gait was antalgic. Cognition and insight was adequate. No suicidal ideation. Claimant's hypertension was controlled and she was counseled regarding lifestyle modification because of her obesity. (Page A1 and A2.)

An April 15, 2009 [REDACTED] indicates that regarding hypertension, claimant was asymptomatic. She checks her blood pressures at home and they are 100 to 115/60 to 80. She was complying with her medication and reported no side effects. She gained 34 pounds in four months because she had been eating junk food and not following low fat diet. She had some shortness of breath at exertion but denied any chest pain. She was awake and oriented x3 and in no apparent or acute distress and she was cooperative. She looked overweight. Her blood pressure at the date of examination was 105/65. Her pulse was 60 and BMI is 38 compared to 33 in December 2008. Her skin turgor had no rashes. Her neck had no jugular venous distention. In her chest her lungs were clear to auscultation but no crackles. In the cardiovascular area, she had no thrills, S1 and S2 were regular and rhythmic. No murmurs. In the abdomen, bowel sounds were present. On palpation, the abdomen was soft with no pain or no masses. In the extremity, she had mild pitting edema in both legs as noted and her neurological examination was grossly intact. (Pages 3 and A4.)

Although this Administrative Law Judge did leave the record open until June 1, 2010 to allow for the submission of the additional medical information, the claimant did not attend her March 22 or April 1, 2010 examinations as scheduled. Claimant did have notice of both those examinations and therefore, the Administrative Law Judge closed the record after her representative sent in documents on May 17, 2010. A letter dated April 30, 2010 from L&S Associates, Inc., indicates that this letter serves as a closing of the record for claimant.

Claimant alleges as the following disabling mental impairments: depression and anxiety.

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.

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 no mental residual functional capacity assessment in the record. Claimant did not attend the mental status examination. 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. Under the Medical-Vocational guidelines, a younger individual, with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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). A person who fails to follow a prescribed treatment will not have a finding of disability. Because claimant refused or failed to attend her medical examination reports were requested by the State Hearing Review Team and also would have been paid for by the State of Michigan, this Administrative Law Judge finds that claimant is not in compliance with the treatment program in terms of providing additional medical information. There was some additional medical information provided that claimant is basically stable but is not in compliance with the treatment program as she continues to eat junk food and does not follow a low fat diet as directed by her doctor.

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: June 28, 2010

Date Mailed: June 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/tg

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cc:

