

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: 2010-17645

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2010

Cass 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 18, 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)?

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 November 9, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.

(2) On January 12, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On January 14, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On January 26, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 22, 2010, the State Hearing Review Team again denied claimant's application stating: It had insufficient evidence and requested an independent physical consultative examination by an internist.

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

(8) On May 28, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: The evidence supports that the claimant's condition has not lasted for a period of 12 months or greater. Prior decisions under consideration include the Medical Review Team decisions of January 21, 2010 and May 13, 2010 and also the State Hearing Review Team decision of February 22, 2010 and the March 22, 2010 SHRT decision deferred for a physical examination. The Medical Evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, Medicaid P is denied due to lack of duration under 20 CFR 416.909. Retroactive Medicaid P was considered in this case and is

also denied. State Disability was not applied for by the claimant. Listings 4.04, 11.0, and 11.14 were considered in this determination.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 235 pounds. Claimant is a high school graduate and completed one year of college. Claimant is able to read and write and does have basic math skills.

(10) Claimant is currently employed as a caregiver for a severely disabled daughter, who weighs 87 pounds and she has been doing this job for 20 years. She gets \$ [REDACTED] per week or \$ [REDACTED] per month for a gross income of \$ [REDACTED] per year. Claimant also worked in [REDACTED] as a home health care aide.

(11) Claimant alleges as disabling impairments: hypertension, speech difficulties, a stroke, left sided weakness, and stiffness.

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).

At Step 1, claimant is engaged in substantial gainful activity and works as home health caregiver for her daughter who weighs 87 pounds. Claimant has been doing the job for 20 years and earns \$ [REDACTED] per week or \$ [REDACTED] per month with a gross annual income of \$ [REDACTED]. Claimant is disqualified from receiving disability at Step 1 because she is engaged in substantial gainful employment. However, this Administrative Law Judge will proceed through the sequential evaluation process for the sake of argument.

The objective medical evidence on the record indicates that claimant is alleging disability secondary to hypertension and cerebrovascular accident (CVA). The claimant suffered a right sided CVA in October 2009. As on page 2, November 2009, the claimant had already regained almost full abilities and was only needing occasional help performing past relevant work. A recent examination in April 2010, showed nearly normal findings. The April 17, 2010, [REDACTED] [REDACTED] ant physical examination indicates that the claimant was cooperative in answering questions and following commands. Her immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provides a good effort during the examination. The blood pressure on the left arm was 115/62 and the pulse was 70 and regular. The respiratory rate was 16. The weight was 233 and her height was 65.5" without shoes. Her skin was normal. Her eyes and ears: visual acuity in the right eye 20/15 and in the left eye 20/15 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aide. The neck was supple without masses. In the chest, there was increased AP diameter with expiratory wheezing, and upper airway rhonchi. There was no accessory muscle use. In the heart there was a regular rate and rhythm without enlargement. There was a normal S1-S2. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular area, there was no clubbing or cyanosis detected. There was no edema appreciated. The peripheral pulses are intact. In the musculoskeletal area there is no evidence of joint laxity, crepitation or effusion. Grip strength remains intact on the right and was decreased on the left with 90% grip remaining. Dexterity is mildly impaired on the left. Pincher grasp between the 1st and 2nd and 1st and 5th digits are normal. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no

difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping. Straight leg raising is negative. There is no paravertebral muscle spasm. Range of motion studies of the joints is as follows: dorsolumbar spine in the flexion, extension, right lateral flexion, and left lateral flexion are all normal. In the cervical spine all areas are normal, in the shoulder all areas are normal, in the elbow all areas are normal, in the wrists all areas are normal, and in the hips all areas are normal. In the knee all areas are normal, the ankles, hands, and fingers are all normal and in the neurological area the cranial nerves are intact. Motor strength is 4/5 in left wrists. Sensory is intact to light touch and pin prick. Reflexes are 2+ and symmetrical. Romberg testing is negative. The claimant walks with normal gait, without use of an assist device. (pp. 53-56)

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 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 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 (age), with a high

school education and an unskilled work history who is limited to light work is not considered disabled.

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 09, 2010

Date Mailed: June 10, 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.

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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

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