

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: 2010-20761

Issue No: 2009; 4031

Case No [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 23, 2010

Newaygo 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 23, 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 January 7, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 27, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On February 1, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On February 9, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 3, 2010, the State Hearing Review Team again denied claimant's application stating that claimant could perform other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.21.

(6) The hearing was held on March 23, 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 30, 2010.

(8) On April 1, 2010, the State Hearing Review Team again denied claimant's application stating that the claimant is alleging disability secondary to Lupus, fibromyalgia, asthma, and generalized pain. The new evidence provided by the Office of Administrative Review is a treating source opinion and statement. The opinion is that claimant is indefinitely disabled. A medical source opinion is not considered acceptable as evidence. This source statement relates to residual physical abilities. The residual abilities indicate that the claimant does not retain the ability for even sedentary tasks. The new evidence does not significantly change the determination made by the Medical Review Team or the State Hearing Review Team. The claimant would retain the ability to perform light exertional tasks with no severe limitations associated with a psychiatric condition. These limitations would allow the claimant to return to her past relevant work in housekeeping. The claimant retains the physical residual functional capacity to perform light exertional work. The claimant's past work was in housekeeping.

Therefore, the claimant retains the capacity to perform her 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 Assistance is denied per PEM 261 due to the capacity to perform past relevant work. Listings 1.02, 1.03, 1.04, 3.03, 12.04, and 14.02 were considered in this determination.

(9) Claimant is a 52-year-old woman whose birth date is [REDACTED] Claimant is 5' 2" tall and weighs 100 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked February 2009 as a factory worker. Claimant lost her job due to loss of work. Claimant has also worked as a housekeeping supervisor, as a waitress, and as a cashier.

(11) Claimant alleges as disabling impairments: Lupus, fibromyalgia, asthma, pain, lower back pain, hypertension, and arthritis. Claimant alleges no mental impairment.

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 February 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record further indicates that a May 20, 2009 treatment note indicates that the claimant was not in distress. Her respiratory rate is 20. Her breathing sounds are diminished with a prolonged expiratory phase of respiration. No rales, rhonchi or wheezing. No temperature. (Page 28)

A medical examination report, dated December 10, 2008, indicates that claimant's blood pressure is 122/80. Her heart rate was 76. Temperature 98.1. Respiration is 20. ENT examination was normal without any lymphadenopathy noted. Thyroid examination revealed no palpable nodules or masses and the thyroid appears to be symmetrical at this time. There was no tenderness to palpation of the area noted. Heart was regular in rate and rhythm without murmurs, rubs or gallops. Lungs were clear to auscultation bilaterally. Musculoskeletal: The patient still had tenderness to palpation of the anterior space of the right shoulder joint and slightly to the left. She has limited range of motion about the horizontal plane due to severe pain. Sensation in the rest of the neurological examination was intact. Pulses were 2+. Claimant was assessed with hypothyroidism and bilateral shoulder pain. (Page 29)

A treatment note, dated June 17, 2009, indicates that the claimant has a history of systemic lupus and arthritis in her hips, knees and back. She is capable of perhaps sedentary work, but could not return to her previous work as a housekeeper or a waitress. She could do sit-down jobs as a cashier. (Page 27)

A treatment note, dated October 31, 2009, indicates the claimant's vital signs show blood pressure of 100/70, rate 80, temperature 98 degrees and respiration of 16. Bilateral tympanic membranes are with normal reflex. Canals are clear. Turbinates are edematous with a mild amount of erythema noted bilaterally. Mucus membranes are moist and there is increased

cobblestoning in the posterior pharynx with no increased erythema or edema. No lymphadenopathy is noted. The patient has tenderness to palpation of the maxillary and frontal sinuses bilaterally. Heart is regular in rate and rhythm without murmurs, rubs or gallops. Lungs are clear to auscultation bilaterally. Abdomen was soft, non-tender and non-distended without any palpable organomegaly or masses. Bowel sounds are active x4. Her assessment was sinusitis. (Page 26)

A medical treatment note, dated October 30, 2009, indicates that claimant is 51 years old and has normal body weight. Her BMI is only 19. Blood pressure is 126/80. (Page 25)

A Michigan Disability Determination Service Mental Status Evaluation indicates that claimant drove herself to the appointment, her posture was normal. She walked with a cane and her clothing was clean and appropriate. She was on time for her appointment, and her hygiene showed that she was clean, wearing glasses, and wearing a brace on her left wrist. She was 5' 2" tall and weighed 107 pounds. She was oriented to time, person and place. Her insight was adequate. Her speech was well organized, slow, concrete and circumstantial with no pressured speech. She denied hallucinations, delusions, illusions and persecutions. She denied suicidal ideation, intention or attempts. She stated that she was depressed. She stated that the date was September 1, 2009, she gave her name, and stated that she was at the Holiday Inn. She was able to repeat 6 numbers forward and 4 numbers backward, immediately. She was able to recall 3 of 3 items after a 3-minute lapse in time. She named the past few presidents as Kennedy, Bush, Clinton and Obama, and her birth date as February 4, 1958. Her date of her third marriage was July 2, 1994. She named five large cities as San Francisco, Chicago, LA, Tampa and Grand Rapids; and current famous people as Bill Cosby and Michael Jordan, and Jennifer Granholm. Events were stated as Labor Day in September and the 4th of July, Independence Day. Her calculations for serial 7's were: 100, 93, 86, 79, 72, 65, 58, 51, and 46; and she lost her place and

quit. She stated 4 plus 8 equals 12, 7 minus 5 equals 2, 9 times 6 equals 54, 18 divided by 3 equals 6, 9 plus 6 equals 15, 8 minus 2 equals 6, and 7 times 4 equals 28, and 14 divided by 2 equals 7. For abstract thinking, she said the meaning of the grass is always greener on the other side of the fence was that it was better on the other side of the fence; don't cry over spilled milk, meant there's not much you can do about it. In similarities and differences, she stated that a bush and a tree are alike because they both have braches. They are different because a tree is taller. Claimant testified that a table and chair both have leg and they are different because you sit on one and the other one you eat at. An orange and a banana are alike because they are both fruit and they are different because one is orange and one is yellow. In her judgment: If she found a stamped, addressed envelope she would put it in the mailbox. If she knew that a theatre was on fire, she'd tell everybody there's a fire. She was asked what taxes are for and she stated they were to raise money for certain things. She was diagnosed with dysthymia and nicotine dependence. Her Axis V GAF was 60. Her prognosis was guarded. (Pages 9-13)

A physical examination report, dated September 12, 2009, indicates that claimant's blood pressure in the right arm was 110/70 and in the left arm 110/70. Her pulse was 60 and regular. Respiration was 16. Weight was 105 pounds. Height was 62" with no shoes. The patient was cooperative throughout the exam. Her hearing appeared normal and her speech was clear. The patient was witnessed to ambulate without the use of a cane, symmetrically and without evidence of gross weakness or instability. There were no lesions appreciated. There was no cyanosis or clubbing. In the eyes: there was visual acuity. The right eye was 20/25 and the left eye was 20/25 with glasses. The scleras are not icteric nor is there any conjunctival pallor. Pupils are equal and reactive to light and accommodation. The fundus appeared normal. The neck was supple with no thyroid masses or goiter. No bruits were appreciated over the carotid arteries. There was no lymphadenopathy. The chest AP diameter was grossly normal. Auscultation of the lungs did not

reveal evidence of wheeze, rhonchi or rales and no evidence of consolidation. Lungs are noted to be clear bilaterally. In the heart, S1 and S2 were heard. No murmurs or gallops were appreciated. The heart does not appear to be enlarged clinically. The PMI is not displaced. The abdomen was flat and non-tender without distention. There were no masses felt, nor is there enlargement of the spleen or liver. (Page 4) In the extremities, there are no obvious bony deformities. Peripheral pulses are easily palpated and symmetrical. There is no edema. There is no evidence of varicose veins. The patient had pain with palpation of cervical spine, shoulder girdle musculature, the right shoulder and bilateral hip joints. She also had pain with palpation of the bilateral knee joints. The patient also reported the large muscle groups of her left upper arm and shoulder was painful for her with palpation on exam today. Range of motion was noted to be intact throughout. There was no erythema or effusion of any joint. Grip strength was normal. The hands have full dexterity. (Page 5) Strength was noted to be intact at 5/5 throughout. Sensation is noted to be intact, other than the patient reported decreased sensation in the tips of her toes bilaterally. Cranial nerves II through XII are grossly intact. Deep tendon reflexes are 2/4 throughout. No disorientation is noted. (Page 7) The noted that it is likely that claimant is using her cane for comfort measures rather than for medical necessity because she does have intact strength and stability. Claimant has a history of hypertension which is well controlled, and a history of asthma for which she has clear lungs. (Page 8)

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.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful 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: 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/cv

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