

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-21119
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 6, 2010
Ingham 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 April 6, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing [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 December 19, 2008, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On May 28, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
- (3) On February 3, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On February 17, 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: they had insufficient evidence and

requested a complete independent physical consultative examination by an internist.

- (6) The hearing was held on April 6, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on June 9, 2010.
- (8) On June 15, 2010, the State Hearing Review Team again denied claimant's application stating that the evidence supports that there are no current severe limitations. It is uncertain exactly why State Disability benefits were initially awarded but it is evident that again there are no longer any limitations that would prevent gainful employment. The alleged psychiatric allegations do not appear severe either. An application Medicaid-P and retroactive Medicaid -P benefits did not meet duration criteria. Medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, Medicaid -P is denied per 20 CFR 416.921(a). Retroactive Medicaid-P was considered in this case and is also denied. State Disability is denied per PEM 261 due to significant medical improvement. Listing 1.02, 1.03, 1.06, 1.07, 12.04 were considered in this determination.
- (9) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 139 pounds. Claimant attended the 11 grade and has no GED. Claimant testified that she was in Special Education for speech and comprehension and she is able to read and write and add, subtract and count money.
- (10) Claimant last worked as a custodian in 2003 for 3 months and she stated that she is mentally retarded.
- (11) Claimant alleges as disabling impairments: left leg infection, chronic pain, mental retardation, depression, memory problems, pins and wires in her left elbow, eczema, and worry about being homeless.

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 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a March 30, 2010 occupational health services assessment indicates that claimant has the following physical examination: in general she was well-developed, well-nourished black female in no acute distress. She ambulated on her own without difficulty. Her height was 5'2" and her weight was 142 pounds. Blood pressure was 110/72, and her pulse was 68 and regular. Respiratory rate was 16. Her HEENT: was normocephalic and atraumatic. Pupils were equal, round and reactive to light in accommodation. Extraocular muscles were intact. Sclerae clear. Conjunctivae were pink. Fundi was within normal limits. Tympanic membranes clear bilaterally. Nasal mucosa is pink without polyps. Pharynx is

moist without erythema or exudate. The neck was supple with free range of motion. No thyromegaly, lymphadenopathy or JVD was noted. Carotid upstrokes were good without bruits. The lungs were clear to auscultation. There was normal resonance to percussion. In the cardiovascular area there was regular rate and rhythm without murmurs. Normal S1 and S2. No S3 or S4. No rubs or thrills are appreciated. In the back there was no spinal or CVA tenderness. Range of motion was within normal limits. There was no straight leg raise noted on either side. The Abdomen was soft, non-tender, non-distended with good bowel sounds in all four quadrants. No masses or bruits were appreciated. No organomegaly was noted. In the extremities, there was no cyanosis, clubbing or edema noted. There were good peripheral pulses palpated distally. In the musculoskeletal area the claimant did have some tenderness over the olecranon process of the left elbow. There was some mild swelling noted. Range of motion was intact. She also had some tenderness over her left shin. There was a well healed scar noted. There was no significant swelling and no evidence of infection. She did not have any other evidence of tenderness or inflammation in any other joints. Range of motion of all joints was within limits. In the neurological area, the claimant was alert and oriented to time, person, and place. Cranial nerves 2-12 were grossly intact. Motor exams showed normal power and tone throughout. Sensory exam was within normal limits. Deep tendon reflexes were 2+ and equal bilaterally. Cerebellar function was intact. Gait was normal. The assessment was that claimant did have a history of a left elbow fracture which occurred in 1995. She did have an open reduction and internal fixation of the fracture back at that time, but she had been having more problems with the elbow and apparently on an x-ray that was done in the emergency room the pins were not in the correct place. She needed further evaluation by an orthopedic surgeon. She should lift more than 10 pounds. She had a history of left leg surgery but did walk with a normal gait (pp. 2-3, new information).

An initial psychiatric evaluation dated July 30, 2009, indicates that claimant had a substance abuse history of heavy crack cocaine from mid 80's to early 1990's. She denied any visual or auditory hallucinations. She has used marijuana on occasion and she smokes a half pack of cigarettes per day since the age of 23. She takes [REDACTED] as prescription. On her mental status evaluation, claimant made good eye contact throughout the interview. She appeared mildly depressed. She was quite pleasant during the interview. Her speech was clear, forward, non-pressured and had a normal tone and volume. Her thoughts were generally organized and relevant although she does seem to have some difficulty in describing certain emotions and thoughts. She does tell a mildly bizarre tale, they are thought to be more a product of possibly her lower education rather than frank psychosis or delusion of thoughts. She denied auditory or visual hallucinations currently. She denies suicidal or homicidal ideation. Her mood as described as depressed, affect is blunted and somewhat restricted. Judgment is seen as fair, insight is fair. Concentration is intact. Fund of knowledge is appropriate for her level of education. Attention span is also intact. Memory was not formally tested. No evidence of ataxia. She was assessed with a mood disorder NOS (p. 7, new information).

This Administrative Law Judge did consider also the original 118 pages of medical reports contained in the file. This Administrative Law Judge finds that claimant's impairment's do not meet duration.

Claimant testified on the record that she can stand for 20 minutes, sit for 10-20 minutes at a time, walk a mile, squat, bend at the waist, shower and dress herself, tie her shoes but not touch her toes. Claimant did testify that she has pain of more than a 10 without medication but with medication her pain is at a 5. Claimant testified that she is right handed and that she has a problem with her left elbow and her left leg which has chronic pain. Claimant testified that she can carry 10 pounds and that she does smoke a half pack of cigarettes a day and is trying to quit and her doctor told her to quit. Claimant testified that she does cook when she gets a chance to and usually cooks things hot dogs and hamburgers and she does grocery shop one time per month without any help. Claimant testified that she does not have a driver's license and catches the bus or asks for a ride. Claimant testified that she does fold clothes, writes poems, and watches TV when she gets a chance.

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 and mental retardation.

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 41), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A)

Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

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).

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.

Landis

/s/

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

Date Signed: July 28, 2010

Date Mailed: July 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.

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