

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201024894
Issue No: 2009
[REDACTED]
Hearing Date: April 14, 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 April 14, 2010. [REDACTED] appeared on claimant's behalf. Claimant testified via teleconference call.

This hearing was originally held by Administrative Law Judge Marlene B. Magyar. Judge Magyar is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

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 August 14, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On October 30, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On December 14, 2009, the department caseworker sent claimant notice that her application was denied.
4. On March 1, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.

5. On March 17, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing her past work pursuant to 20 CFR 416.920(e) and stated in its comments that the claimant retains the residual functional capacity to perform sedentary work. The claimant's past work was sedentary. The claimant retains the capacity to return to past relevant work (Department Exhibit #2, pgs 1 and 2).
6. On the date of hearing, claimant was a 44-year-old woman whose birth date is [REDACTED]. Claimant was 5'2½" tall and weighed 315 pounds. Claimant completed the tenth grade and does have a GED. Claimant is a certified nurses' assistant.
7. Claimant last worked in November 2008 as a telemarketer. Claimant also worked with [REDACTED] doing sales for subscriptions and in a nursing home as a certified nurses' assistant.
8. Claimant alleges as disabling impairments: uncontrolled hypertension, a BMI of 63, neck pain, irregular heartbeat, chest pain, shortness of breath, memory and concentration problems, stroke, joint pain.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 2008. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that a June 22, 2009 [REDACTED] medical record indicates that claimant's blood pressure was 170/90, her heart rate was 92, respiration was 12 and temperature was 37.1. In general her examination revealed a morbidly obese woman who was extremely anxious throughout the encounter. There was no aphasia noted. In the neurological area: Cranial nerves II through XII are normal. Fundus revealed flat disc. Motor strength she gave suboptimal effort. Strength was essentially 5/5. Sensation: She was exquisitely tender to touch in the right arm and leg. Reflexes were diminished in the upper and lower extremities. The toes were go down bilaterally. Coordination was intact. She was able to stand and ambulate unassisted. Blood sugars were marginally elevated. CT of the brain demonstrates chronic left thalamocapsular infarct. The impression was a prior stroke and focal tenderness with palpation over the torso, abdomen and shoulders (pg 16). Another medical record dated May 20, 2009 indicates that claimant was diagnosed with a hypertensive emergency with a right eye vision problem. In the emergency room her blood pressure was 249/162, pulse was 104, respiratory rate 24, temperature was 98 degrees Fahrenheit, oxygen saturation 96% on room air. She was started on nitroglycerin drip. On physical examination her blood pressure was 157/111, pulse was 81, respiratory rate was 18, oxygen saturation was 97% on room air. She appeared to be anxious, she was talking a lot. Denied any chest discomfort or pain. She was obese with normal hygiene. Bilateral pupils were equal, reactive to light and accommodation. There was mild conjunctival redness visible. No scleral icterus. The right eye on examination was not painful. The extraocular muscle movements were within normal limits. External ear examination looked within normal limits. The nasal septum was not deviated. Nasal turbinates not enlarged. Buccal mucosa was moist, within normal limits. The neck was supple. No carotid bruits. No jugular venous distension. No palpable thyromegaly. On the chest on inspection there

was bilateral equal chest expansion. On palpation there was the point of maximal impulse that was not deviated. No palpable heaves or thrills. The lungs on auscultation were clear. There was decreased breath sounds bilaterally, likely secondary to the body habitus. No wheezes, no rales, no rhonchi and no crackles heard. In the cardiovascular area: S1 and S2 heard, in regular rate and rhythm. No murmurs heard. No gallops. No extra heart sounds heard. The abdomen was obese and soft, nontender, nondistended. There was a scar from a previous injury visible on the right upper quadrant. Bowel sounds were positive. No palpable organomegaly. No audible abdominal bruit. On breast inspection, the bilaterally breast looked almost similar, however there was some scarring at the 9 o'clock position on the right breast. The nipple was normal. There was no discharge. There was no tenderness or masses on the right breast. Left breast examination also seemed to be some scarring around the nipple area. There was no abscess, discharge or tenderness. In the extremities there was positive bilateral pitting edema. The peripheral pulses were intact. No cyanosis. No clubbing. In the neurological area the claimant was awake, alert, oriented times three. There were no focal motor or sensory deficits. The patient had normal speech, memory, affect and expression. Deep tendon reflexes 2+. Cerebral signs, Romberg's negative. Gait is normal. The patient had a normal skin turgor and was warm. No visible rash, icterus or purpura. Claimant was encouraged to stop smoking at that time and also encouraged to perform lifestyle dietary modifications because of her morbid obesity (pgs 49 and 50). A CT of the head and neck were done which was a negative study. Chest x-ray was done with a poor view; however, it was negative for any acute process. EKG was done which showed no T-wave inversion in leads V5-V6 and lead 2 (pg 54). A medical examination report dated April 10, 2009 indicated that claimant had hypertension, anxiety and morbid obesity and that she was normal in all areas of her examination. The clinical impression was that stable. She could occasionally carry ten pounds or less. She could stand or walk less than two hours in an eight-hour day. She could use both of her upper extremities for simple grasping, reaching, pushing and pulling, and fine manipulating and she had not mental limitations (pgs 66 and 67).

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 which support claimant's contention of disability. 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 anxiety.

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, he 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 44), with a high school education and an unskilled work history who is limited to sedentary work is not considered disabled. In the instant case, claimant could perform her past work pursuant to 20 CFR 416.920(e).

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.

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