

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: 2010-26398

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 22, 2010

Eaton 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 July 9, 2009. 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 October 20, 2009, claimant filed an application for Medical Assistance benefits alleging disability.
- (2) On November 23, 2009, the Medical Review Team denied claimant's application.
- (3) On December 1, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On March 1, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 30, 2010, the State Hearing Review Team requested additional medical information stating in its analysis and recommendation: the

claimant was in a motor vehicle accident in 1994 at age 16. She sustained a traumatic brain injury and multiple other injuries. The claimant did graduate from high school. She also has relevant work history and worked until July of 2009. In August 2009 the claimant was admitted due to depression related to the loss of her job and vision loss. She was noted to be a recovering alcoholic. In March 2010, she reported hearing mumbled voice but no thought disorder symptomology. She was depressed and anxious, but was spontaneous, logical and organized. The claimant does have some visual loss. In July 2009, her corrected vision was 20/40 but she had marked constriction of the visual field. However, the visual field did not expand with increased testing distance and the doctor had her return in 2 weeks. Her vision was 20/60 and 20/50 with her current corrections. She had significant non-physiologic constriction of the visual fields. The doctor felt her findings were inconsistent with the way she was able to get around. He felt there was a component of functional vision loss. The claimant did have a myocardial infarction and did have coronary artery bypass grafting in December 2009. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple unskilled light work avoiding jobs that require time visual acuity. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a history of unskilled work, MA-P is denied using Vocational Rule 202.20 and 201.27 as guides. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

- (6) The hearing was held on April 22, 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 July 27, 2010.
- (8) On August 1, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20 and commented that the newly submitted evidence does not significantly or materially alter the previously recommended decision.
- (9) Claimant is a 32-year-old woman whose birth date is [REDACTED]. Claimant is 5'2.5" tall and 250 weighs pounds. Claimant recently gained 50 pounds. Claimant is a high school graduate. Claimant is able to read and write and can add, subtract and count money.

- (10) Claimant last worked July 2009, at [REDACTED] as a cashier. Claimant has also worked as a security officer, for an insurance company, as an electronic records clerk and as a newspaper clerk typist.
- (11) Claimant alleges as disabling impairments: a nervous breakdown, legal blindness, coronary artery disease, a traumatic brain injury from April 1994, 2 heart attacks, one September 2009 and one in December 2009, triple bypass in December 2009, bi-polar disorder, depression, memory loss, and hearing voices.

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).

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

The objective medical evidence on the record indicates that claimant testified on the record that she lives with her partner and is supported by her partner in an apartment. Claimant testified that she is legally married but separated and she has no children under 18 who live with her and has no income, but she does receive Food Assistance Program benefits. Claimant does have a driver's license but her partner takes her where she needs to go. Claimant does cook things in the microwave everyday and usually cooks frozen meals. Claimant does grocery shop 2 times per month and she needs help finding things and it's hard to be around people. Claimant does do the laundry and does watch TV 6 hours a day. Claimant testified that she can stand for 15-20 minutes, sit for an hour, walk for a quarter mile. Claimant testified that she can't squat because she has no balance and is dizzy, she can bend at the waist, shower and dress herself, tie her shoes, but not touch her toes. Claimant testified that her level of pain on a scale from 1-10 without medication is a 10 and with medication is a 4. Claimant testified that she is right handed and her left arm has a scar on it and she had some arteries removed from it so she can't do much with it. Claimant testified that she has arthritis in her left femur from 1995, and her knees are fine but her lower back has degenerative arthritis. Claimant testified that she does smoke a half pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. The heaviest weight that she can carry is 10 pounds. Claimant testified that she drinks 2 beers every few months and she has never done drugs. She gets up and watches TV in a typical day and she is able to engage in sexual relations. Claimant testified that she is currently suicidal and standing on bridges, and she had a nervous breakdown in 2009 and she doesn't know what work she could do.

Visual acuity July 1, 2009, with her current correction was 20/40 OD and 20/40 OS. Confrontation visual fields were notable for market constriction, however, the visual field did not expand with increased testing distance as would be expected with physiologic constriction (p. 127). On July 15, 2009, the claimant subjectively felt her vision had worsened. She continued to work 7-10 hours a day as a cashier at a hardware store (p. 115). Her vision was 20/60 and 20/50 with her present correction. She had significant non-physiologic constriction of the visual field in each eye. The results were inconsistent with an individual who is able to easily navigate throughout the examination process. The doctor did indicate that a component of functional visual loss was suspected (p. 116).

The claimant was admitted in August 2009, due to suicidal ideation. She described her stress as losing her job and loss of vision since a motor vehicle accident (p. 168). She reported that she was a recovering alcoholic (p. 169). The claimant made poor eye contact. Her leg bounced frequently throughout the interview and her arm was shaking which appeared to be anxiety provoking. Speech was clear but latent mood was depressed. Affect was flat and at times sarcastic. Thoughts appeared to be clear and organized and relevant. She denied visual hallucinations. She noted that she talked to

herself but she was not sure whether she heard an audible voice or they were her thoughts (p. 171).

The claimant was admitted in [REDACTED] due to a non-ST elevated myocardial infarction. She was found to have 3 vessel diseases and underwent PTCA and stenting (p. 50). The claimant was admitted again in [REDACTED] due to unstable chest pain. Cardiac catheterization revealed multi-vessel coronary artery disease and the claimant underwent coronary artery bypass grafting (pp. 28-29). The claimant was admitted again in [REDACTED] due to chest pain that was atypical and possibly psychogenic.

In March 2010, the claimant had no symptoms of angina. She did have some shortness of breath which was attributed to her obesity and de-conditioning. On examination she had trace bilateral lower extremity edema which strong peripheral pulses. Her examination was basically unremarkable. She was to start cardiac rehab (records from DDS).

A mental status dated March 2010, showed the claimant was spontaneous, logical, organized with normal speech. She described voices that were mumbled. She reported no other thought disorder symptomology and she seemed depressed, anxious and nervous with a constricted range of affect. Diagnosis included cognitive disorder secondary to traumatic brain injury at A16, generalized anxiety disorder, chronic pain disorder associated with psychological factors and general medical conditions and mood disorder (records from DDS).

An eye examination report at page 166, indicates that claimant does have corrected vision of 20/40 in the right eye and 20/20 in the left eye. A mental status examination dated August 4, 2009, indicates that claimant was a 32 year old slightly obese female, who appears her stated age. She makes poor eye contact throughout the interview and is positive for some psychomotor action displayed by her leg bouncing frequently throughout the interview as well as her right arm shaking when she described something that appeared to be anxiety provoking. She is casually dress and appears perhaps very mildly unkept. Speech is clear but latent. The claimant speaks in a low volume but normal tone. She appears depressed. Affect is flattened and at times sarcastic. Thoughts appear to be clear, organized, and relevant. She denies visual hallucinations. She was assessed with major depressive disorder severe, rule out psychotic features and post traumatic stress disorder, and a history of traumatic brain injury (p. 171).

On February 16, 2010, claimant was admitted with chest pain, where she underwent several EKG's troponins and CPK's all demonstrated to be within normal limits. Since there was some sternal wound separation without any evidence of infection it was decided to have cardiothoracic surgery consulted to evaluate the wound. Cardiothoracic surgery evaluated the claimant and agreed that there was no evidence of infection. The claimant was cleared for discharge and recommended follow-up for two weeks. She underwent a persantine stress test that demonstrated no evidence of

reversible ischemia with an ejection fraction for 61%. She also had a 2D echocardiogram that demonstrated an ejection fraction of 50-55%. No significant transvalvular flow abnormality is seen and no significant pericardial effusion noted. The claimant's pain is also improved therefore, it was decided that the claimant should be stable for discharge (p. A2).

Claimant had a classification of patients with disease of heart of class 2. Patients with cardiac disease resulting in slight limitation and physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitations, dyspnea, or anginal pain. Therapeutic classification of Class C patients with a cardiac disease whose ordinary physical activity need not be restricted, but who should be advised against severe or competitive physical efforts (p. A29).

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, bipolar disorder, memory loss, and hearing voices.

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 he 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 he 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 he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he 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 he 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 he 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 he 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 he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 32), with a 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, and 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 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: August 20, 2010

Date Mailed: August 23, 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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