

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: 2010-33015
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 08, 2010
Bay 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 June 8, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On January 14, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On January 22, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

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

(4) On April 27, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 10, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing 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 203.28. The department considered listings 9.01, 5.01, 3.01, 11.01, and 12.01.

(6) The hearing was held on June 8, 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 11, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: The claimant was admitted in January 2010 due to hypoglycemic event due to skipping meals. Her condition improved with treatment. Her physical findings were otherwise unremarkable. A previous mental status examination showed she was mildly depressed but was spontaneous and well organized. She did have some abnormalities in concentration, general knowledge, memory, etc... but the psychologist felt she obtain and maintain employment (p. 6). The claimant's impairments do 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 medium work. In lieu of

detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's Vocational Profile of closely approaching advanced age a 52, 14 years of education and a history of unskilled work MA-P is denied using Vocational Rule 203.21 as a guide.

Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 52-year-old woman whose birth date is [REDACTED] Claimant is 5' 1" tall and weighs 117 pounds. Claimant attended two years of college and studied Psychology. Claimant is able to read and write and does have basic math skills.

(10) Claimant is currently employed as a home health care aide working 9 hours per week at \$ [REDACTED] per hour. Claimant has also worked at a bakery making donuts and at the dollar store as a cashier. The duties that claimant performs for her current employer are; making sure he has his medication, light cooking by putting things together for him to eat like grilled cheese soup.

(11) Claimant alleges as disabling impairments: insomnia, concentration problems, neuropathy, diabetes mellitus, colitis, asthma, migraines, arthritis, osteoporosis, and depression.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 but is currently working as a home health care aide working 9 hours a week and earning \$ [REDACTED] per hour. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in January 2010, the claimant was found unconscious after she had skipped a couple of meals and then took 35 units of [REDACTED]. She was given glucose 4 and started improving in the ER (p. A1). She completely recovered from her hypoglycemic event and was counseled on the importance of eating regularly and taking her insulin regularly. On the admission summary of January 27, 2010, on a physical examination her blood pressure was 92/56, respiration 26, temperature 95.3. Pulse oximetry was 97%. She was a 52 year old female appearing her stated age in no acute distress. Her head was normocephalic. No masses or lesions. No inflammation, masses, or lesions noted in eyes, nose and throat. Eyes: the pupils were equal and reactive to light. Extraocular muscles were intact. In the neck there were no masses. The thyroid was normal. Trachea was midline. The heart had regular rate and rhythm without murmurs. The lungs: CTA bilaterally. The abdomen was soft and non-tender. No organomegaly. No abnormal masses. In the extremities, there was good gross range of motion. No deformities. No peripheral edema. Peripheral pulses are normal. The neurological: the cranial nerves 2-12 are grossly intact. DRT and strength were equal bilaterally. The impression was acute hypoglycemia with hypothermia and unresponsiveness, diabetes mellitus type 2, insulin requiring, asthma, depression and osteoporosis (p. A1).

The assessment indicates that this is a 52-year-old female who has been diabetic, who continues to drink her liquor as well as smoke marijuana. Claimant testified on the record that she does drink alcohol but very seldom and she stopped smoking in November 2006 and quit doing drugs 15 years before the hearing (p. A14). A psychological report dated August 13, 2009,

indicates that claimant was transported to the evaluation by her son. She reported a weight of 120 pounds and a height of 5'1". Posture and gait were unremarkable. Clothing looked clean. Hygiene was good. Mood was mildly depressed. Mannerisms were cooperative. She denied any difficulty finding the location and arrived at the appointment 10 minutes early. She appeared to be in contact with reality. When asked how she felt about herself, she replied, "I do think that I am good and I am well like. I make friends easily." There was no unusual motor activity or hyperactivity. She did not appear to have a tendency to minimize or exaggerate symptomology. Her thoughts were spontaneous and well-organized. There were no problems in patterns or content of speech. She denied the presence of any auditory or visual hallucinations, delusions, obsessions, persecutions, or unusual powers. She reported on-going feelings of worthlessness but no suicidal ideation. There were no fluctuations in her weight over the past year. She struggled with initial insomnia and restless sleep. Throughout the evaluation her emotional reaction appeared mildly depressed. She was oriented x3. She correctly stated the year as 2009 and her current address. She was able to recall 5 digits and 4 digits backward immediately. She was able to recall 2 out of 3 objects after a 3 minute interval. She named the current president as Obama, and the previous presidents as Bush and Clinton. She correctly stated her birth date as August 3, 1957. When asked to name 5 large cities, she named Detroit, Miami, San Diego, Chicago, and Austin. She named current famous people as Brad Pitt and Angelina Jolie. She was unable to identify any current events. Performance on serial 7's as follows: 100, 93, 86, 79 and 72. Performance on single digit calculation tasks were as follows: $9+8=17$, $12-7=5$, $5*5=25$, $8*7=56$, and $36/4=9$. When asked the meaning of the saying "The grass is always greener on the other side of the fence," she replied, "I do not think there is greener grass on the other side of the fence." When asked the meaning of the saying "Don't cry over spilled milk," she replied, "don't

fuss over the simple things in life.” When asked how a bush and tree are alike, she replied, “they are both green,” and when asked how they are different, she replied, “one is short and bushy and the other is tall.” In judgment when asked what she would do if she found a stamped addressed envelope lying on the sidewalk, she replied, “put it in the mailbox.” When asked what she would do if she discovered smoke or a fire in a theatre, she replied, “call 911.” The medical report indicated that her depression appears to be situational and transient in nature and would likely remiss if she could find employment that she could maintain. While her illnesses complicate her schedule, it seems she could obtain and maintain employment. She was diagnosed with adjustment disorder, poly substance dependence in sustainful remission, colitis, asthma and diabetes and financial problems and unemployment. Her GAF is 68. Her prognosis was fair and she would be able to manage her own benefit funds (pp 3-7).

This Administrative Law Judge finds that claimant was not compliant with her medication or meals which caused her to be hospitalized in January 2010. This Administrative Law Judge also finds that claimant’s impairments do not meet severity or duration.

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, concentration problems.

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 mental limitations resulting from his reportedly depressed state. There is no Mental Residual Functional Capacity Assessment in the record. 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 his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his 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 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 closely approaching advanced age (age 52), 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). Claimant does not meet listing 1.04, 9.08, or 12.04 and she does not meet Medical Vocational Rule 201.12.

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 30, 2010

Date Mailed: June 30, 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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