

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: 2010-33023

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 2, 2010

St. Clair 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 2, 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 February 8, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On March 29, 2010, the Medical Review Team denied claimant could perform other work.
- (3) On April 15, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On April 22, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 11, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: they had insufficient evidence and requested a complete internal independent

physical consultative examination by an internist and a psychiatric evaluation.

- (6) The hearing was held on June 2, 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 6, 2010.
- (8) On July 8, 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), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.10.
- (9) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5 ½ " tall and weighs 135 pounds. Claimant attended the 9th grade and has no GED and doesn't read well but is able to add, subtract and count money.
- (10) Claimant last worked in approximately 2007 at [REDACTED] cutting meat. Claimant has also worked in house keeping at the [REDACTED] and at the [REDACTED] [REDACTED] for a few months.
- (11) Claimant alleges as disabling impairments: lymphoma, fibromyalgia, hypertension, asthma, back pain, aching bones, depression, and a damaged left bicep.

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 approximately 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that she does have a driver's license and her daughter and her husband usually take her where she needs to go because she is taking Narcotics. Claimant is married with no children under 18 and has no income and does not receive any benefits from the Department of Human Services. Claimant testified that her husband does all the cooking and she does grocery shop 1-2 times every two weeks and she usually needs help carrying the bags. Claimant testified that her husband and daughter clean her home and she does dust sometimes. She watches TV 1 hour per day and has no hobbies. Claimant testified that she can stand for 10 minutes, sit for 10-20 minutes, walk a half a block, but not squat or bend at the waist well. Claimant testified that she is able to shower and dress herself but cannot tie her shoes and not touch her toes. Claimant testified that her level of pain on a scale from 1-10 without medication is an 8 and with medication is a 6. Claimant is right handed and she hurt her left biceps, her legs and feet hurt and her knees hurt. Claimant testified that she has 3 to 4 bad days per week. The heaviest weight that claimant can carry is 5 pounds and she is not able to engage in sexual relations. Claimant testified that she does not smoke, drink alcohol or do any drugs. Claimant testified that in a typical day she gets up, brushes her teeth, drinks coffee, watches TV, reads and takes 3-5 naps per day.

A psychological mental status report dated June 9, 2010, indicates that claimant was alert and oriented during the interview. She was polite and cooperative. She was spontaneous, well-organized and detailed in her presentation. Her emotional reaction

was labile. She was intermittently tearful throughout the interview. She was able to state her full name and that it was Wednesday June 9, 2010, and she was in Roseville. In her immediate memory she could repeat 4 digits forward and 3 digits backwards. In the recent memory, she was able to register all 3 objects of apple, penny, and recall them pear, and table after 3 minutes. In the past memory she was able to state that her birth-date was [REDACTED]. When asked to name presidents during her lifetime, she responded, Nixon, Obama, Bush, Bush, and Clinton. For 5 largest cities, she named Detroit, Miami, Chicago, Washington, and Lansing. For current famous people she named President Obama and Charlie Sheen. For current events she named the oil spill. In calculations, she said that $4+5=9$, $8+6=14$, $12-5=7$, $3*9=27$, she stated that for $6*7$ she would have to have paper. In her serial 7's she stated that 100, 93, 87, $87-9=78$. When asked to interpret the grass is always greener on the other side of the fence, she stated "it would be a better day, no they think they are better than us", and when asked to interpret, no sense crying over spilled milk, she stated "it's over and done with so carry on." She stated that a tree and a bush were similar because they are both a shrub and she stated they were different because one is taller and fuller and one is short. When asked what she would do if she found an envelope on the street that was sealed and addressed and had a new stamp on it she stated that she would put it in the mail. When asked what she would do if she was the first person in the movies to see smoke and fire she stated that she would yell fire and get the hell out. She stated that she had a bad accident in the early 80's and they had to bring her down to Detroit to a hospital because she had a skull fracture and a broken leg, but she denied any seizures or panic attacks. She was alert verbal and oriented in all spheres. Her memory was poor and her fund of general information was constricted. She was poor at computations and her concentration and attention span were poor. Her reasoning tended to be literal and concrete. Her formal judgment was impaired. She was diagnosed with major depressive disorder, single episode severe, and her current GAF was 45 and her prognosis was guarded and she would be able to manage her own funds, (pp. 226-228).

A June 14, [REDACTED] examination indicated that the claimant was cooperative in answering questions and following commands. Her immediate, recent, and remote memory was intact with normal concentration. Her insight and judgment were both appropriate. She provided a good effort during the examination. Her blood pressure was 110/70 on her right arm. Her pulse was 82 and regular, respiratory rate was 12, weight was 149 pounds, height was 65" without shoes. Her skin was normal. Her visual acuity in the right eye was 20/50 and the left eye was 20/40 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aides. The neck was supple without masses. There was increased AP diameter in the chest. There were moderate bronchial breath sounds that were clear to auscultation and symmetrical. There is no accessory muscle use. Heart: regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular, there was no clubbing or cyanosis appreciated. There was no edema present. The femoral popliteal, dorsalis pedis and posterior tibial pulses are normal. Hair growth is present on the lower extremities. The feet are warm

and normal color. There are no femoral bruits. Musculoskeletal: there is no evidence of joint laxity, crepitation, or effusion. There is synovial thickening at the left knee. Grip strength remains intact. Dexterity is unimpaired. The claimant could pick up a coin, button clothing, and open a door. The claimant had mild difficulty getting on and off the examination table, moderate difficulty heel and toe walking, moderate difficulty performing partial squat and moderate difficulty standing on either foot. There is a 30 degree thoracic kyphosis. Range of motion studies for all extremities was normal or within normal range. Neurological: the cranial nerves were intact. Motor strength was diminished to 4/5 at the lower left extremity and tone was normal. Sensory is intact to light touch and pinprick. Reflexes are intact and symmetrical. Romberg testing is negative. The claimant walks with a moderate left limp gait without the use of an assistive device. The conclusion is degenerative arthritis to her back and left leg injury and she had diminished range of motion in her back. She also had some synovial thickening in the left knee but the range of motion in the knee was otherwise stable. She had weakness in the dorsiflexion and plantar flexion in the left foot. The claimant does not have any sensory loss. She has a moderate left limp and a cane would be helpful for pain control. At this point continued supportive care would be indicated. She may require operative intervention to her back at some point in the future or to her knee. Lymphoma: there were no findings of recurrence today. The claimant continues to undergo monitoring. There is no lymphadenopathy. Her overall prognosis is fair to guarded (pp. 221-224).

A physical residual functional capacity assessment questionnaire dated September 9, 2008, indicated that claimant had non-Hodgkin's lymphoma and severe chronic back pain and depression weakness fibromyalgia. Her prognosis is that she was stable and she had depression and anxiety, and her impairment would last 12 months and she was incapable of even low stress jobs at that time. She could occasionally lift and carry less than 10 pounds but never do any twisting, stooping, crouching, climbing ladders, or climbing stairs. She would miss about 4 days of work per month and she was unable to drive because she was taking narcotics and had mental limitations and concentration memory and sustained concentration (pp. 215-218).

A medical note dated July 20th 2009 indicates that claimant had low grade germinal center follicular lymphoma. She was presented with a large retroperitoneal mass and B symptoms. She responded to CHOP-Rituxan therapy where she completed 6 cycles resulting in complete clinical response. She has been having chronic back pain attributed to fibromyalgia and degenerative spine disease, but not lymphoma (p. 212).

At Step 2, claimant has the burden of proof of establishing that he 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, 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 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 a gain 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.

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 3, 2010

Date Mailed: August 3, 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.

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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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