

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-36476
Issue No: 2009
Case No: [REDACTED]
Hearing Date: June 30, 2010
Calhoun County DHS (21)

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jay W. Sexton

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 30, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

This hearing was originally held by Administrative Law Judge Jay Sexton. Jay Sexton is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. 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 February 9, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On February 5, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On February 10, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On May 14, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On June 8, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing 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 202.13.
- (6) The hearing was held on June 30, 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 13, 2010.
- (8) On July 14, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the Office of Administrative Hearings returned this case with newly presented evidence. This newly presented evidence offers nothing significant related to the claimant's allegations and therefore does not materially alter the determination of the Medical Review Team of February 5, 2010. The claimant retains the physical residual functional capacity to perform light exertional work: there are no psychiatric limitations. The claimant's past work was unskilled in nature. Therefore, the claimant retains the capacity to perform their past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listing 1.02, 1.03, 1.04, 2.08, 3.03, 4.04, 8.01, 9.08, 11.14, 12.04, 12.06 and 14.07 were considered in this determination.
- (9) On the date of hearing claimant was a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighed 189 pounds. Claimant is a high school graduate.
- (10) Claimant last worked as a housekeeper. Claimant has worked as an inspector and worked on the sewer according to medical records (p. 58).
- (11) Claimant alleges as disabling impairments: hypertension, depression, anxiety, diabetes, diabetic neuropathy, asthma, anxiety and back 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 for several years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a radiology report of the chest indicates no acute process present. There is a stable granuloma at the right lung base. Heart is not enlarged. No infiltrate, failure or effusion (Claimant Exhibit A1). A radiology report dated [REDACTED] indicates significant progression of degenerative disc disease at L3-4 since last study, no other interval changes. There is bony sclerosis along the superior endplate of L4, narrowing of the interspace and

vacuum phenomenon at the interspace. No true compression fracture. Other levels appear relatively stable without progressive degenerative changes. There is no effusion of the facet joints or of the SI joints (Exhibit A2).

An [REDACTED] examination indicates that claimant's blood pressure on the right arm is 140/80 and the left arm was 140/82. Pulse was 78, respiratory rate is 16, weight is 196 pounds and height is 62" with no shoes. The claimant was cooperative throughout the examination. Her hearing was normal and speech was clear. Gait was observed and near normal with only a very mild limp to the left. She did not require the use of any assistive device for ambulation, although she does have a cane today she did not use it for gait evaluation. The skin had points of excoriations and erythema along her face which she states is mersa infection. There is no cyanosis or clubbing. The eyes, visual acuity in the right eye is 20/20 and the left eye is 20/20 without corrective lenses. The sclerae were not icteric nor was there any conjunctival pallor. Pupils are equal, round and reactive to light. The neck was supple with no thyroid masses or goiter. No bruits are appreciated over the carotid arteries. There is no lymphadenopathy. The chest AP diameter is grossly normal. Lungs are clear to auscultation bilaterally without any adventitious sounds. In the heart, normal S1 and S2 were auscultated. No rubs, clicques or murmurs are heard. The heart does not appear to be clinically enlarged. The PMI is not displaced. The abdomen was obese and non-tender without distension. There were no masses felt nor were there any enlargement of the spleen or liver. In the extremities, in the musculoskeletal area there are no bony deformities on examination. Peripheral pulses easily palpable and symmetrical. There is no edema. There is no evidence of varicose veins. There is no tenderness, erythema, or effusion of any joints on examination. Range of motion of all joints inspected was essentially full. The hands did have full grip and digital dexterity. There was no atrophy appreciated on the musculature on exam. The claimant does not exhibit any difficulty getting on and off the table. Heel and toe walking was normal. Straight leg raise test was negative. No paravertebral muscle spasms are palpable. In the neurologic area, cranial nerves II-XII are grossly intact. Reflexes are 1+/4+ and symmetrical throughout. Strength is essentially 5/5 throughout. There was no clonus. Negative straight leg raise test. No long tract signs on examination. She was able to perform heel and toe walk although she did have some difficulty and she did use the doctor for assistance during that portion of the examination. She did have a positive Romberg's also on examination with her eyes closed. There was a distal and proximal sensory loss to pin prick and temperature, likely secondary to her diabetes mellitus (p. B1).

The conclusion was peripheral neuropathy, small fiber grade greater than large fiber. Her diabetes was not well-controlled and her sugars were dangerously high in the range of 400. She had a history of carpal tunnel syndrome and elbow pain. She had a history of chronic back pain as well as history of scoliosis. She had a history of a mersa infection. She was currently on bactrim therapy. She had asthma since childhood and on examination the lungs were clear to auscultation bilaterally without any adventitious sounds. She did not have any clubbing on examination. Capillary refill is less than 2 seconds. Oral mucosa was pink and moist. She had a history of hypertension. There was no abnormal heart sounds or lung sounds on examination (p. B2).

A physical residual functional assessment in the record indicates claimant can occasionally lift 20 pounds, frequently lift 10 pounds and stand or walk at least 2 hours in a 8 hour work day and sit about 6 hours in an 8 hour work day but must periodically alternate sitting and standing to relieve pain or discomfort. She could push or pull limited in upper extremities and limited in lower extremities, including operating hand or foot controls (p. B4).

A mental status examination dated [REDACTED], indicates that claimant was diagnosed with major depressive disorder, single episodes severe without psychosis and an axis GAF of 49.

Claimant is a Caucasian female, missing some teeth, with some visible sores on her face. She walked slowly and used a cane. She was dressed in Capri pants, ankle socks, tennis shoes and a short sleeve top. Her overall hygiene was average and she was early for the appointment. She ambulated with a cane and was slow on her movements. She had some pain related behaviors such as shifting in her chair. She was cooperative and in contact with reality. I did not detect any incidental tendency's to exaggerate symptoms. Claimant spoke in a loud voice using a mild southern accent. She was 100% intelligible. Thoughts were circumstantial and tangential. She required frequent re-direction. There were no reports of auditory or visual hallucinations in logical ideas and referential beliefs. She endorsed passive thoughts of wanting to die but no act of suicidal ideation. She cried continuously throughout the interview. She was oriented to time, person and place and situation (p. C3).

She repeated 5 digits forward and 4 digits in reverse. After 3 minutes she remembered 3 of the 4 words. Obama and Bush were identified as the past few presidents. Her date of birth was given as [REDACTED]. She named as large cities, New York, California, and Florida. Current famous people was Joan Rivers. She stated that the current events were somebody killing somebody or murdering something and the health care. Her calculations were $5+6=11$ and $4*3=12$. She really didn't know what don't cry over spilled milk meant and she stated that the grass is always greener on the other side of the fence and it is better to be with the Lord than to be here. She stated that a bush and a tree were alike and they both have stems. She really didn't know why a bush and a tree are different. She stated the reason that you cook meat thoroughly is so that you won't get food poisoning and the reason for washing your hands is because of germs (p. C4). She would be able to manage her own benefit funds (p. C5).

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

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.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 23, 2011

Date Mailed: August 24, 2011

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.

LYL/alc

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