

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-36537
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date:
October 19, 2010
Oakland 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, a telephone hearing was held on October 19, 2010. Claimant personally appeared and testified.

ISSUE

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

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 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On May 7, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.14.
- (3) On May 12, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On May 21, 2010, claimant 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 other work in the

form of light work per 20 CFR 416.967(b) and unskilled work (20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.13.

- (6) The hearing was held on October 19, 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 March 1, 2011.
- (8) On March 10, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The objective medical evidence supports the findings of the MRT/SHRT. The claimant does not have any history of employment. 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 light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 52 years, a high school education and a history of no gainful employment, MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and was 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. Listings 1.02, 1.03, 1.04, and 4.04, 5.06, 11.14, 12.04, 12.06 and 12.09 were considered in this determination.
- (9) On the date of hearing, claimant is a 52-year-old woman whose birth date is March 11, 1958. Claimant is 5'8" tall and weighs 152 pounds. Claimant is a high school graduate and completed a floral design course. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked in 2005 as a cashier at the drycleaners. Claimant has also worked in insurance billing, floral arranging, as a nurse's aide and waitress.
- (11) Claimant alleges as disabling impairments: depression, paranoia, bad back, bad knees, stomach problems, arthritis, scoliosis, hypertension, gastroesophageal reflux disorder (GERD), bipolar disorder, depression, attention deficit disorder, anxiety, as well as polysubstance dependence.

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 State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she lives alone and she is supported by her sister. Claimant does have a driver's license but is afraid to drive. Claimant cooks but she does not grocery shop because she does not leave the house. Claimant testified that she does not do any housekeeping duties but she does need help. Claimant testified that she is up at 8 a.m. and moves around, sits and lies down while watching television, and friends come over and she usually talks to her sister who takes care of her cat and goes to bed at 10 p.m. Claimant testified that she has back pain and she passes out. Her knees pop out and she falls and she throws up a lot and that she cannot leave the house because sometimes she does not get out of bed. Claimant testified she can walk one block but she has back spasms and her knees go out. She can stand for two minutes and sit for 30 minutes at a time. The heaviest weight she could carry is ten pounds and that she is right-handed. Claimant does smoke half a pack of cigarettes per day but does not drink alcohol or any drugs, according to her testimony, and she was hospitalized five times for back spasms, suicide ideation, and knee pain.

A physical examination dated January 3, 2011 indicates that claimant was 5'6" tall and weighed 169 pounds. The blood pressure was 118/84. The pulse was 91 per minute. The respiratory rate is 18 per minute. The patient was awake, alert and oriented and in no acute distress. The head was traumatic and normal cephalic. Pupils were round and reactive to light. The throat is clear. The neck was supple with no lymphadenopathy. No thyroid enlargement. In the respiratory, the lungs were clear to auscultation. The air exchanged bilaterally. In the cardiovascular area, the heart has regular rate and rhythm. S1 and S2 are within normal limits. The gastrointestinal abdomen is soft and benign with positive bowel sounds. No rebound tenderness. In extremities, there is no edema or cyanosis. Good peripheral pulses. In the neurologic area, the patient is oriented x3. She has normal muscle strength in upper and lower extremities. Reflexes are 2+ asymmetrical in all limbs. In the musculoskeletal area, the patient has tenderness in the lumbar spine, mostly on the right side. She was able to get on and off the table without difficulty. She has difficulty bending with pain and flexion. The patient had good range of motion in both knees with minimal crepitus in the right knee. No effusion noted. The patient was able to squat. She was able to walk in her toes and her heels without any other difficulties. Her gait was very steady. LS spine x-ray was done and results were attached. The impression was lower back pain with decreased range of motion possible radiculopathy versus muscle strain. Bilateral knee pain, severe major depression and anxiety. The doctor indicated that claimant would have difficulty with repetitive bending and movements, but she should be able to lift carry, push and pull moderate amounts of weight. She should be able to walk decent distances and she needed a psychiatric evaluation. (Pages A1 through A3.)

A January 24, 2011 lumbar spine evaluation indicates there is fusion of the L2-L3 of market narrowing of the intravertebral disc space and L1-2 and there are minimal degenerative changes in the lumbar spine. (Page 84.) The psychological evaluation of

January 7, 2011 indicates that claimant was a 52-year-old Caucasian separated female tall and medium built who was punctual for appointment, coming with a male friend. She says she was 5'6" tall and weighed 150 pounds. Her weight has been steady. She was clean and attractively groomed. Her long hair was neatly styled back in a ponytail. She wore tight fitting pants and tight fitting boots fashionably. She wore pretty makeup. She wore several ear studs on both ear rims. She cried throughout the interview. She stated that she felt bad because she was out of her home. She spoke in a normal tone of voice with a moderate amount of spontaneity and productivity. Her speech was coherent and relevant. She was in good contact with reality. At times, her information was considered to be unreliable. (Page 85.) Her affect was anxious and depressed with continued crying spells. She said today was Friday, January 7, 2011 which was the correct answer. In immediate memory, she was able to repeat five numbers forward and two numbers backward. In recent memory, she was able to remember two to three objects given to her three minutes later. For the names of past presidents, she said the current president is [REDACTED], before him was [REDACTED], before him was [REDACTED]. She said her date of birth was March 11, 1958 which was the correct answer. For five large cities, she said [REDACTED], and [REDACTED]. When asked to do serial 7s from 100, she said 11, 93, 96 79, 72, 63, 57, 43, 36, 29, 22, 15, 8 and 1. For the meaning of the proverb, the grass is greener on the other side, she said it's better somewhere else, and for the meaning of the proverb, don't cry over spilled milk, she said don't get upset if you have an accident. When asked how a tree and a bush were alike, she said they both have leaves. When asked how they were different, she said the tree was bigger. When asked what she would do if she found a stamped addressed envelope, she said I would mail it. When asked what would be her plans if she discovered a fire in a theater, she stated that she would run out. She has a history of cocaine and heroin addictions and she has a history of being hit by a car. She was diagnosed with dysthymic disorder, cocaine and opiate and heroin dependence in remission, she suffered for it, and rule out panic disorder with agoraphobia. Her Axis GAF was 55 to 60. Her prognosis was fair to poor, depending on the continued abstinence from substances and she would not be able to handle her own benefits due to her substance abuse history and that would be pages 8, 6, and 7. A Medical Examination Report dated December 10, 2009 indicated that claimant was 5'8" tall and weighed 160 pounds and was right hand dominant. The clinical impression was that she was deteriorating and she could frequently carry ten pounds or less and never carry 20 pounds or more. She could stand or walk two hours in an eight-hour work day and she did not need assistive devices for ambulation, but she could use a cane if she needed to walk more than a block for her back or her knees if they were inflamed. She could use her right upper extremity for simple grasping, pushing, and pulling and fine manipulating but could use neither for reaching, pushing, nor pulling. That report was inconsistent. She could operate foot and leg controls with both feet and legs and that she has some mental limitations in the form of sustained concentration and memory and writing and social interaction because she was afraid to be outside.

The clinical impression is that claimant is stable.

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: Bipolar disorder, depression, attention deficit disorder, anxiety, paranoia and agoraphobia.

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 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 [REDACTED], published by the [REDACTED]... 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 person who has a vocational profile of 52 years old with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.13.

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 contained in the file 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's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 24, 2011

Date Mailed: May 25, 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.

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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