

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-37062

Issue No: 2009

Case No: [REDACTED]

Hearing Date:

July 15, 2010

Genesee County DHS (5)

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jana Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on July 9, 2009. Claimant did not appear to testify at the hearing. Claimant was represented at the hearing by [REDACTED]

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the State Office of Administrative Hearings and Rules Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the record in its entirety.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro 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 8, 2010, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On February 10, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.21.

- (3) On February 17, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On May 25, 2010, [REDACTED] filed a request for a hearing to contest the department's negative action.
- (5) On June 9, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work, per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.21.
- (6) The hearing was held on July 15, 2010. Claimant was unavailable to testify but the record was left open for the submission of additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team.
- (8) On July 29, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.21 and stated that the newly submitted evidence does not significantly or materially alter the previous recommended decision.
- (9) The information contained in the file indicates that claimant is a 46-year-old woman whose birth date is [REDACTED]. According to medical examination report contained in the file, claimant is 5'3" tall and weighs 162 pounds on January 12, 2010.
- (10) Claimant completed the 12th grade, but did not attend the hearing so no subjective medical testimony could be elicited.
- (11) Claimant alleges as disabling impairments: non-obstructive coronary atherosclerotic, heart disease, chronic obstructive pulmonary disease (COPD), dyslipidemia, systemic arterial hypertension (New Page number 1).

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 no testimony was elicited as to when she last worked. Claimant is not disqualified from receiving disability at Step 1 based upon the evidence contained in the file.

The objective medical evidence on the record indicates a medical examination report dated December 10, 2009, indicates that claimant was 63" tall and weighed 167 pounds. Her blood pressure was 151/98 and she was right hand dominant. She had some shortness of breath and she continued to smoke. She had chest pain and palpitations. She was referred to cardiac and she had fibromyalgia and depression which was controlled with medications. She was normal in her general area of

examination, she was normal in HEENT. T, she was normal in the abdominal, musculoskeletal neurological area.

The clinical impression indicated that the claimant was stable and she could frequently carry or lift 10 pounds or less and that she could occasionally carry 20 pounds. She could stand or walk about 6 hours in an 8 hour workday. She did not require assistive devices for ambulation. She could use both of her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating. She could operate foot and leg controls. She did not have any mental limitations (pp. 3-4).

At new pages 1 and 2, claimant was not assessed for her residual functional capacity. At new page 3 a psychiatric psychological examination indicates that claimant had an axis GAF of 57, and last year was 54. She was diagnosed with a major depressive disorder 296.2 and a panic disorder with agoraphobia 300.01 as well as fibromyalgia and financial and social stressors. The examination was dated May 18, 2010, and it indicated that claimant was able to function independently at times but not for a sustained basis, especially in stressful situations. She was able to work on call for a short time driving buses until it became too stressful. She functions well with therapy and medication, but does have some strong negative emotional reactions at times especially when under extreme stress. Thought processes are normal, oriented x3 and memory is average (pp N3-N4).

A mental residual functional capacity assessment in the file indicates that she is not significantly limited in most areas and is only moderately limited in the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods of time, the ability to work in coordination with or in proximity to other without being distracted by them, the ability to make simple work related decisions, and the ability to complete a normal work day and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods (p. N5). Claimant is moderately limited in the ability to interact appropriately with the general public, the ability to ask questions or request assistance, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes and the ability to travel in unfamiliar places or use public transportation (p. N6).

An emergency department chart from [REDACTED] indicates that a neurologic standpoint, claimant was alert and oriented x3. Her speech was clear. She responded to commands. She moved all extremities. Her skin was warm, dry and intact with normal color and turgor. Normal soft tissue exam. No abrasions, lacerations or significant bruising noted. In the HEENT: eyes, ears and nose without visible drainage, redness or swelling. Swelling without difficulty. No reported change in hearing or vision. In the pulmonary bilaterally, breath sounds were clear. Respirations were regular and unlabored. Mucous membranes and nail beds were pink. In the cardiac area, pulse was regular with no complaint of chest pain. Peripheral pulses were palpable. No peripheral edema. Capillary refill less than or equal to 3 seconds.

Abdomen was soft, non-distended and non-tender. Bowel sounds were audible. No complaint of nausea, vomiting, diarrhea or constipation. The ability to empty the bladder without dysuria. No complaint of frequency or urgency or hematuria. Range of motion is intact for all extremities. No muscle weakness. The claimant received verbal instruction in her educational material related to her pain. She verbalized understanding (p. N9). In her ENT: her pharynx was normal. EENT inspection is normal. No evidence of venous jugular distention. The neck is supple with no evidence of meningismus. In the pulmonary area is currently in no acute respiratory distress. Normal non-labored respirations. The breath sounds are normal with good equal air movement. The chest wall is non-tender to palpation. The eye examination: pupils are reactive to light. In the circulatory system, regular rate and rhythm. No murmur. Peripheral pulses are strong and equal. In the abdomen was soft and non-tender to palpation. No organomegaly. Bowel sounds are normal. In the neurological area, she was alert, no motor deficit, no sensory deficit (p. N10). Her primary diagnosis was unstable angina.

An admission of [REDACTED] indicates that claimant had a 99% oxygen on 2 liters, 68 pulse, blood pressure 133/73, repeat 119/59, pulse 69, temperature 36.7, body mass index 30.2, weight 77 kilograms and height 167 centimeters. HEENT: had moist mucous membranes and extraocular movements were intact. Neck had negative jugular venous distension. Heart S1-S2, regular rate and rhythm and no murmurs. Lungs were positive inspiratory wheeze, coarse breath sounds, scattered rhonchi throughout lung fields. The abdomen was soft, non-tender, non-distended. The bowel sounds, positive x4 quadrants. No masses. No organomegaly. The rectal exam was normal, negative hemoccult stool noted in the vault. In the extremities, no edema. Good range of motion bilaterally. Laboratory and x-rays was at CBC: WBC 13.9, hemoglobin 13.7, hematocrit 39.1, platelets 185, MCV 87.7, BNT 123, PT 10. Chest x-ray is negative. EKG, normal sinus rhythm possible old infarct in septal leads (p. N11).

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, anxiety, 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 a 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 46), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

Claimant's testimony and the information indicate that claimant has a history of tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (D A&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial

evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical 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: April 12, 2011

Date Mailed: April 13, 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.

LYL/alc

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