

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-37343
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date:
July 7, 2010
Van Buren County DHS

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 7, 2010. Claimant personally appeared and testified. 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 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 September 11, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On March 24, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On March 26, 2010, the department case worker 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 11, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant does have a moderate degree of respiratory impairment. However, her FEV1 of 1.9 does not meet the listing level of 1.15 or less for her height. Her FVC of 2.6 also does not meet the listing level of 1.35 or less for her height. She has a history of back surgery and back pain without significant neurological abnormalities. Her weight would also cause some limitation. The claimant's depression is stable on medication. The claimant's impairment's 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 work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would not preclude work activity at the above stated level for 90 days.
- (6) The hearing was held on July 7, 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 January 6, 2011.
- (8) On February 3, 2011, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the newly provided evidence from the Office of Administrative Hearings has not materially altered the findings of the MRT and SHRT determinations. The MRT determination is supported in that the claimant would retain the ability to perform their past relevant work which is light and skilled in nature. The claimant retains the physical residual functional capacity to perform light exertional work; there is no evidence of severe psychiatric limitations. The claimant's past work was light and skilled in nature. Therefore, the claimant retains the capacity to perform their past relevant work as the owner of the cleaning service. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the capacity to perform past relevant work. Listings 1.02, 1.03, 1.04, 3.02, 4.04, 11.14, and 12.04 were considered in this determination.

- (9) On the date of hearing claimant was a 46-year-old woman whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 198 pounds. Claimant had 1 year of college and is a [REDACTED]. [REDACTED] Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked [REDACTED] as a [REDACTED] for 6 months. Claimant worked as a self-employed janitor for 12 years.
- (11) Claimant alleges as disabling impairments: cancer of the throat, chronic obstructive pulmonary disease, asthma, arthritis, hypertension and depression.
- (12) Claimant testified on the record that she quit smoking 3 days before the hearing and did not drink alcohol or do drugs.

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 2008. 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 was receiving Food Assistance Program benefits and she had a driver's license but was not currently able to drive. Claimant testified that she could cook with help and grocery shop with help and she could do housekeeping duties with help. Claimant testified that she uses a shower chair, doesn't climb stairs and does not need help for dressing and bathing. Claimant testified that she can walk for 3 minutes, stand for 5 minutes, and sit for 5 minutes at a time. The heaviest weight that she can carry is 0-10 pounds and she is right handed. Her pain is a 4-5 out of 10 with medication and without medication is 8 out of 10. Claimant testified that she stopped smoking 3 days before the hearing and she was last hospitalized in 2008 for back surgery. Claimant testified that she does have cancer of the throat and would be starting radiation treatment.

In [REDACTED] the claimant did have left L3-L4 foraminotomy with removal of a lateral disc osteophyte and left L4-L5 foraminotomy with removal of the synovial cyst (p. 364). In [REDACTED] she was 63" tall and weighed 222 pounds. Her blood pressure was 128/80. The chest revealed increased AP diameter with prolongation of the expiratory phase. There were moderate bronchial breath sounds that were clear to auscultation and symmetrical. There was no clubbing, cyanosis or edema detected. Grip strength was intact and dexterity was unimpaired. Motor strength and tone were normal.

Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Gait was normal (p. 376).

Pulmonary function study dated [REDACTED] showed the claimant's best FEV1 was 1.9 and best FVC was 2.06 (p. 375). The claimant was able to do her activities of daily living. She was able to drive, cook and do household chores (p. 377). She was cooperative in answering questions and following commands. Her insight and judgment were appropriate (p. 376). The claimant's treating source indicated her depression was stable on medication and she had no mental limitations (p. 349).

A [REDACTED] consultation summary indicates that claimant was evaluated for clinical T1-T2 N1MO, stage 3 well differentiated squamous cell carcinoma of the supraglottic larynx (p. A1).

On physical examination her blood pressure was 144/99, pulse is 96 and regular, respirations are 20, temperature is 98.0, and weight is 225 pounds. KPS equals 90. In general the claimant was a well-developed, well-nourished white female sitting comfortably on the examination table in no acute distress. The HEENT: the face was symmetric, extraocular movements were intact, oral cavity is pink and moist. No lesions were noted in the oral cavity. The doctor performed a nasolaryngoscopy in the office. It showed the vocal chords appear to be mobile. There was whitish raised mass noted on the epiglottis, mostly on the left side, extending on the aryepiglottic fold. It does not appear to involve the vocal chords. There was no involvement of the base of the tongue. Claimant had a sore neck mass in the posterior aspect on the left. On examination, there was no neck and lymphadenopathy except in the level 5 area on the left. There is about a 2 centimeter lymph node that is very tender to palpation. The impression is that claimant appeared to have clinical T-1 or T-2 squamous cell carcinoma of the epiglottis. She most likely has N1 disease which would place her at stage 3 (pp. A2-A3).

A [REDACTED] follow-up note indicates that her diagnosis is clinical T2 NOMO stage 2 squamous cell carcinoma of the supraglottic larynx and radiation alone would be the standard of care and chemotherapy would not be recommended (p. A5).

A [REDACTED] report of operation indicates that claimant had an oral pharyngeal polypoid lesion. Claimant tolerated the procedure well and was transferred to recovery in stable condition (p. A6).

A [REDACTED] [REDACTED] note indicates that claimant was taken to the operating room and was given a rigid diagnostic laryngoscopy with biopsy and a rigid diagnostic esophagoscopy, a bronchoscopy and a nasopharyngoscopy (pp. A8-A9).

A [REDACTED] pet scan from the skull base to the thigh was conducted and in the findings there was a thickening in the right frontal sinuses. There was soft tissue thickening involving the epiglottis. There were no enlarged cervical lymph nodes.

There was an abnormal FDG uptake by the epiglottic mass. There was no metastatic adenopathy or distant metastatic disease. Staging is T2 N0 M0 stage II P. 12). There was a stable non-specific nodular lung infiltrate with an upper lobe predominance. The stability and lack of abnormal FDG uptake favors old granulomatous disease. The differential diagnosis includes hypersensitivity pneumonitis and smoking related bronchiolitis (p. A15).

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 or may result in death. There is sufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. She has been diagnosed with clinical T1-T2 N0 M0 stage II well differentiated squamous cell carcinoma of the supraglottic larynx which was found on an EGD on March 31, 2010. The biopsy was taken in the mass and revealed an infiltrating well differentiated squamous cell carcinoma. Objective medical information indicates that the claimant also has problems swelling and eating because of throat pain. This Administrative Law Judge finds that the medical record is sufficient to establish that claimant has a severely restrictive physical impairment. For these reasons this Administrative Law Judge finds that claimant has met her burden of proof at step 2.

Since claimant was not denied at Step 2, the analysis proceeds 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 regulation.

This Administrative Law Judge must determine whether or not claimant has the ability to perform her past relevant work. Claimant's past relevant work was as a janitor and as a certified nurse's assistant doing medical billing.

This Administrative Law Judge finds that claimant cannot currently perform her prior job based upon the fact that she did on the date of hearing and thereafter from at least June 2010 suffer from Cancer of the epiglottis. Claimant is not disqualified from receiving disability 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 sufficient objective medical evidence that she currently lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is currently physically unable to do light or sedentary tasks based upon her Cancer diagnosis and Cancer treatment. Claimant's activities of daily living do appear to be somewhat limited as she has stated that she can only perform them with assistance and she has provided 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 or could result in death.

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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Claimant has established by the necessary competent, material and substantial evidence on the record that she is disabled for purposes of Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits effective the [REDACTED] determination that she had a papillomatous lesion and it was determined that claimant had a clinical T1-T2 NOMO stage II well differentiated squamous cell carcinoma of the supraglottic larynx and that claimant needed definitive radiation therapy. Therefore, claimant is considered to be disabled from [REDACTED] forward.

Prior to [REDACTED] this Administrative Law Judge finds that 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 at that time. 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.

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, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

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 had not established until [REDACTED] that she could not 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 1 year of college and an unskilled/skilled work history who is limited to light work would not have been considered disabled before claimant was diagnosed with throat cancer in [REDACTED]

It should be noted that claimant continues to smoke until 3 days before the hearing 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 before [REDACTED]

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 before March 31, 2010. The claimant should have been 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 for the period of time before March 31, 2010.

Accordingly, the department's decision is PARTIALLY AFFIRMED.

However, this Administrative Law Judge finds that the claimant has established that she is disabled for purposes of Medical Assistance and State Disability Assistance benefits from March 31, 2010, forward when she was diagnosed with clinical T1-T2 N1MO Stage II well differentiated squamous cell carcinoma of the supraglottic larynx and was required to have definitive radiation therapy. Therefore, the department's decision is PARTIALLY REVERSED. The department is ORDERED to reinstate claimant's application and to consider, if it has not already done so, to determine if all other non-medical criteria are met for claimant from March 31, 2010, forward. The department shall inform the claimant of a determination in writing.

Landis

/s/

Y. Lain

Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 21, 2011

Date Mailed: April 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.

2010-37343/LYL

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

cc:

