

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-37609
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 4, 2010
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on August 4, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

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

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 December 21, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On March 12, 2010, the Medical Review Team denied claimant's application stating that claimant's condition is nonsevere.
- (3) On March 17, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On June 1, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 14, 2010, the State Hearing Review Team denied claimant's application stating insufficient evidence and requested an independent physical consultative examination by an internist.
- (6) The hearing was held on August 4, 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 October 6, 2010.
- (8) On October 14, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis as a recommended decision: the objective medical evidence present does not establish a disability at the listing equivalent level. The collected medical evidence shows that the claimant is capable of performing past work in assembly. 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 past work in assembly. Therefore, based on the claimant's vocational profile of an advanced age, high school education and an unskilled/semi-skilled work history, MA-P is denied using Vocational Rule 201.20 as a guide. Retroactive MA-P was considered in this case and was also denied.
- (9) Claimant is a 56-year-old woman whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 203 pounds. Claimant is a high school graduate and has one year of welding in vocational school. Claimant is able to read and write and does have basic math skills.
- (10) Claimant did apply for Social Security disability and was denied in May 2010.
- (11) Claimant last worked in September 2009 [REDACTED]. Claimant [REDACTED] from 1999 through 2009. Claimant did factory work from 1990 through 1994.
- (12) Claimant alleges as disabling impairments: fibromyalgia, diabetes, MRSA, and leg pain, as well as a deteriorating left shoulder and pain all over her body, as well as three knee surgeries on her right knee.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since September 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that she lives with her husband and her husband supports her and they live in a house. The claimant has no children under 18 and does not have any income, and she does receive the Adult Medical Program for her prescriptions. Claimant does have a driver's license and drives two times per week approximately 40 miles both ways to her doctors. Claimant does cook two times per day and fixes things like toast, roasts, hamburgers and spaghetti, and she does grocery shop one or two times per month with no help, but she is tired. Claimant testified she cleans her home by vacuuming, doing laundry and dishes, but she does not do any outside work. Claimant testified that she reads and

watches television, and the TV is on all the time. Claimant testified that she can stand for one hour, sit for two to three hours at a time and can walk a quarter mile. Claimant testified she cannot squat but she can bend at the waist and has some pain in her lower back. Claimant testified that she can shower and dress herself, tie her shoes, but not touch her toes, and her level of pain on a scale from 1 to 10 without medications is a 9 and with medication is a 2. Claimant testifies she is right handed and does have arthritis in the right hand. She has shooting pains in her legs and feet which last approximately one hour two to three times a week. Claimant testified that the heaviest weight she can carry is ten pounds and that she does not smoke, drink, or do drugs. Claimant testified that on a typical day, she gets up and takes her blood sugar, drinks coffee, and takes a shower. She does laundry, makes breakfast and then makes lunch, cleans the house and makes supper and watches television and goes to bed but does not sleep. Claimant testified she was in the hospital for 12 days in 2009 because she had MRSA, which has currently cleared up. Claimant testified that she cannot work any longer than two to three hours a day.

A September 7, 2010 internist's examination indicates that the patient is cooperative in answering questions and following commands. The patient's immediate, recent and remote memory is intact with normal concentration. The patient's insight and judgment are both appropriate. The patient provides a good effort during examination. Mental status was normal. Mild signs of blood pressure are 140/82, pulse equals 82 and regular, respiratory rate was 16, weight is 198.5 pounds. Claimant is 64 inches tall without shoes. The skin was normal other than examination of the buttock area was deferred. Visual acuity in her right eye equals 20/15; in the left eye equals 20/20 with corrective lenses. Pupils are equal, round and reactive to light. The patient can hear conversational speech without limitation or aids. The neck is supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no excess or loss of muscle use. In the heart, there is regular rate and rhythm without enlargement. There is a normal S1 and S2. In the abdomen there is no organomegaly or masses. Bowel sounds are normal. Her abdomen is obese. The vascular area had no clubbing or cyanosis detected. There is no edema appreciated. The peripheral pulses were intact. In the musculoskeletal area, there was no evidence of joint laxity, crepitation or effusion. There is thickening of the knees or the tibial plateaus. Grip strength remains intact. Dexterity is unimpaired. The patient can pick up a coin, button clothing and open the door. The patient had no difficulty getting on or off the examination table, no difficulty heel and toe walking, mild squatting and was unable to hop. There is diffuse pain in the lower level of the back spine. Straight leg raising was negative. There is no paravertebral spasm. Range of motion studies were within normal limit in all areas. In the neurological area, cranial nerves were intact. Motor strength and tone were normal. Sensory was intact for light touch and pinprick. Reflexes in the lower extremities were 2+ and symmetrical. Romberg testing is negative. The patient walks with a normal gait without the use of an assistive device. The conclusions were that she had diabetes but the doctor did not find any evidence of sequelae. Her sugars appear to be somehow stable by history. She is moderately overweight and weight loss would be helpful, but she has difficulty doing any physical activities. She did have diffuse tenderness in her back and was diagnosed with arthritis which appears to be mostly myofascial. She had

some mild deterioration to her knees. She is on pain management. She does complain of problems with sleeping stating this is mostly related to her history of truck driving and poor sleeping habits. She does not appear to have any manifestations of cellulitis. (New information, pages 1 through 6.)

A July 21, 2010 family practice examination indicates claimant was normal in all areas of examination. Her clinical impression was that she was stable. She could occasionally lift ten pounds but never over ten pounds. She appears that she could sit less than six hours in an eight-hour workday, and she could use both upper extremities for fine manipulating, or for simple grasping, but needed for pushing or pulling. She could not operate foot or leg controls because of her fibromyalgia. She is in constant pain. Sometimes the pain is worse than others. She had normal to no limitations (pages A and B of the new information).

An April 21, 2010 Medical Examination Report indicates that claimant was normal in all areas of examination. She was 5'4" tall. She weighed 198 pounds. Her blood pressure was 124/78 and the clinical impression was that she was stable and she could stand or walk less than two hours in an eight-hour day and sit about six hours in an eight-hour workday. She could never lift any weight, but she could use her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating but could not operate foot or leg controls. She had no mental limitations (pages C and D of the new information). This Administrative Law Judge considered all of the medical reports in making a final determination.

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.

The claimant alleges no disabling or mental impairments.

There is no mental residual functional capacity to assess in the record. Under the medical vocational guidelines.

A person of advanced age, at age 56, has a high school education and unskilled, semi-skilled work history and can is not considered disabled pursuant to the Medical Vocational Rule 201.20.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 24, 2010

Date Mailed: November 29, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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/tg

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cc:

