

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: 2010-39684
Issue No: 2009

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris 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 August 17, 2010 by Administrative Law [REDACTED] who has since left employment with the State Office of Administrative Hearings and Rules. This hearing was completed by Administrative Law Judge [REDACTED] after reviewing the record. Claimant personally appeared and provided testimony through an interpreter. The claimant was represented by Hector Lugo, from L & S. The claimant's son, [REDACTED], presented as a witness.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On December 18, 2009, claimant filed an application for Medical Assistance (MA) and retroactive MA benefits alleging disability.
- (2) On March 9, 2010, the Medical Review Team denied claimant's application stating that the claimant had a non-severe impairment that lacked duration of 12 months. (Department Exhibit A, page 42))
- (3) On March 15, 2010, the department caseworker sent claimant notice that his application was denied. (Department Exhibit A, page 1)

- (4) On June 15, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On June 28, 2010, the State Hearing Review Team again denied claimant's application stating that the medical evidence did not document a mental/physical impairment that severely limits the claimant's ability to perform basic work activities. (Department Exhibit B, page 1)
- (6) An in-person hearing was held on August 17, 2010. Claimant alleges disability based on diabetes, back and knee pain, "bad nerves", poor short-term memory and previous brain hemorrhage.
- (7) Claimant is a [REDACTED] whose birth date is [REDACTED]. Claimant is approximately 5' tall and weighs approximately [REDACTED] pounds. Claimant reports that she completed the 4th grade in Mexico. Claimant reports that she speaks only Spanish, but can perform some basic math.
- (8) Claimant reported that she has no work history. She does care for her grandchildren. She has no social security number.
- (9) Claimant reports that she lives with her family and is able to cook grocery shop and perform housekeeping duties, but that she gets tired when performing these tasks. The claimant does not have a driver's license.
- (10) An October 29, 2009 examination found the claimant to have mild tenderness and mild decreased range of motion with flexion and extension of the spine. The claimant reported depression and back pain. The physician noted that the claimant was not taking her depression medications consistently. (Department Exhibit A, page 37 – 38)
- (11) The claimant was admitted to Holland Hospital on September 1, 2009. She presented with a left-sided headache. A CT Scan found the claimant to have a left-sided hematoma at the junction of the temporal, occipital, and parietal lobes, with subdural hematoma and associated edema. No evidence for aneurysm. No neurologic deficits were found. Hypertension was not currently reflected and was not reflected in the outpatient records. The physician had questions about the frequency she actually took her Lisinopril. The claimant was discharged on September 3, 2009 in satisfactory and stable condition. (Department Exhibit A, pages 24 – 33)
- (12) A September 9, 2009 examination found the claimant to be within all normal limits. (Department Exhibit A, pages 34 – 35)
- (13) An April 10, 2009 examination again found the claimant to be within all normal limits. The physician did note that the claimant only took her

Lisinopril when she “felt” her blood pressure was high. (Department Exhibit A, pages 18 – 19)

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 does 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 are 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 no work history. (See Finding of Fact #8). Claimant is not disqualified from receiving disability at Step 1.

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 that has lasted or is expected to last at least 12 months. Claimant has reports of pain in her back and knees; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no objective laboratory or x-ray findings to show the claimant has back or knee abnormalities. The only objective laboratory findings are from the claimant's hematoma when she was hospitalized in September, 2009. However, the objective evidence shows that this condition has resolved and no longer causes the claimant limitations. The claimant was discharged in September, 2009 in satisfactory and stable condition, with no neurological deficits. The claimant does have type II diabetes and high cholesterol. There is no objective evidence in the record to support that these conditions are severely restrictive. Further, there is evidence in the record to show that the claimant is not always medication compliant to manage these conditions. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

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 impairments, standing alone or combined, do 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 proceed to Step 4 and assess her ability to perform past relevant work. In this case,

there is no past relevant work experience. As such, the claimant would not be disqualified at Step 4 and the analysis would continue.

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 retains the residual functional capacity to perform other work.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Claimant has submitted insufficient objective medical evidence to show that she lacks the residual functional capacity to perform a variety of unskilled jobs currently existing in the national economy, even with the alleged impairments. Claimant's activities of daily living do not appear to be very limited. Even though claimant is of advanced age, has a limited education and little or no previous work history, 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. 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 unskilled work even with her impairments.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of unskilled 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/ _____
Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 2/28/11

Date Mailed: 2/28/11

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.

