

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.: 2010-47588

[REDACTED]

Load No.: [REDACTED]

Hearing Date: September 23, 2010
Ingham 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on September 23, 2010. The claimant appeared and testified. Claimant was represented at the hearing by L & S Associates, Inc.

ISSUE

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

FINDINGS OF FACT

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

- (1) On April 27, 2010, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On July 6, 2010, the Medical Review Team denied claimant's application stating that claimant impairments were non-severe.
- (3) On July 12, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On August 3, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 18, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the

evidence does not support any severely impairing condition at this time. The medical evidence record does not document a mental/physical impairment that significantly limits the claimants ability to perform basic work activities. Therefore, MA-P is denied for 20CFR 416.921 (a). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.03, 1.04, 3.03, 4.04, 11.02, 11.03, 11.04, 12.02, 12.04, & 13.13 were considered in this determination.

- (6) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5'1" tall and weighs 176 pounds. Claimant is a high school graduate and attended one year of college at Davenport University. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked 10 or 15 years ago at a hotel as hostess and management. Claimant also worked as a waitress and at McDonalds.
- (8) Claimant alleges as disabling impairments: Depression, memory loss, hypertension, chest pain, seizures, brain tumors, back and neck pain, fibromyalgia, carpel tunnel syndrome, and asthma.

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

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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 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 for at least 10 years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has filed no record that she had a brain tumor removed in 1995 and that Department of Human Services has taken care of her. Claimant has testified she is married with no children under 18 and she does not have any income. Claimant does receive FAP benefits. Claimant testified that she does not have a driver's license and she rides the bus or her mother lets her take the car. Claimant testified that she does not cook but she does grocery shop 3 times per month and needs help getting heavy things on the lower shelf. Claimant testified that her hobbies doing puzzle books and hand-held videos and watching television 10 hours a day. Claimant testifies that she can stand 20 to 30 minutes, and sits 15 to 20 minutes at a time. Claimant testifies that she can walk from the building to the parking lot but she can not squat and she can barely bend at the waist. Claimant testifies that her knees are fine and that she needs help getting dressed and help with her hair and getting showered. Claimant testifies she is able to tie her shoes but can not touch her toes. Claimant testifies her pain on a scale from 1 to 10 without medication is a 10 and with medication is a 7 to 8. Claimant testifies that she is right handed but she has carpal tunnel syndrome and her hands and arms hurt. Claimant testifies she has sciatica and pain in her legs and feet. Claimant testifies that on a typical day, she takes her medications first and then gets dressed and sometimes she walks around because her muscles get stiff. Then later she watches television and is up and down every 20 minutes. Claimant testifies that she is unable to engage in

sexual relations and that she was in the hospital on January 2010 for mild heart attack and stayed there for 2 ½ days. Claimant testifies that she has a cane prescribed by her doctor and also has a walker. A May 26, 2010 medical examination report indicates the claimant weighed 178lbs and she was normal in all areas of the examination. The claimant's impression was that she was stable and had no physical limitations and no mental limitations. (pg. 14& 15) She was diagnosed with lumbago migraines. Physician clinical report indicates that on January 30, 2010, her appearance was alert, her bio-sounds have been reviewed, her pharynx was normal, the neck had a normal inspection, and she had a normal heart rate and rhythm. Her heart sounds were normal. She had mild respiratory distress, her abdomen is soft, her skin was normal, skin color, her extremities exhibited normal range of motion. Her chest x-rays showed normal heart size, mediastinum normal. Great vessels normal. No fracture. The x-rays were independently viewed. The chest CT showed no acute disease. Great vessels, normal. Mediastinum, normal. An EKG of left atrial enlargement. Wide intraventricular conduction delay. Poor airway conduction. Nonspecific ST segment/Twave abnormalities. No acute ischemia. (p. 16) A CT pulmonary angiogram done on January 30, 2010 indicates that there was no evidence of pulmonary embolic disease. There are no mediastinal or hilar masses. There is no evidence of pericardial or pleural effusion. Lung windows demonstrate no acute infiltrate. There are no pulmonary nodules. Aorta is of normal caliber with no apparent aneurysm or dissection. (p. 27) Additional medical examination report completed by an intern medicine on May 27, 2010 indicates that claimant was normal in general appearance and was diagnosed with fibromyalgia and headache and back pain. The claimant had no mental limitations. (p. 12 & 13)

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, memory loss, disorientation.

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 he 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 he 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).

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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 he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he 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 he 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 he 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 he 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 he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 41), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

