

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

IN THE MATTER OF:



Reg. No: 2010-51938
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date
December 14, 2010
Lenawee 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 December 14, 2010. Claimant was supposed to be represented at the hearing by [REDACTED] but he did not appear. Claimant chose to proceed in his absence.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro 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 May 19, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On June 7, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 20, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On August 30, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 9, 2009, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: The claimant had a myocardial infarction with angioplasty and stenting in March 2010. In July 2010, there was no evidence of heart failure. She had evidence of mild emphysema or mild obstructive pulmonary disease. The claimant had some difficulty doing orthopedic maneuvers mostly due to her weight. She was depressed but logical and spontaneous. 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 simple unskilled 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 equivalent education and a history unskilled 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 impairments would not preclude work activity at the above stated level for 90 days.
- (6) The hearing was held on December 14, 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 December 15, 2010.
- (8) On January 3, 2011, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommended decision: the newly submitted evidence does not significantly or materially alter the previous recommended decision. 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 a wide range of light unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, 10th grade education and a light unskilled work history, 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.
- (9) Claimant is a 49-year-old woman whose birth date is [REDACTED] Claimant is 5'6" tall and weighs 280 pounds. Claimant recently gained 20 pounds. Claimant attended the 11th grade and has a GED. Claimant is able to read and write and does have basic math skills.

- (10) Claimant last worked July 2009, at a temporary service for [REDACTED] factory line packaging. Claimant has worked as a floor inspector, as a pipe bender and welder and doing factory jobs in assembly, production, and inspection.
- (11) Claimant alleges as disabling impairments: neuropathy, diabetes mellitus, depression, heart problems, chronic obstructive pulmonary disease, and a heart attack in March 2010.

CONCLUSIONS OF LAW

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 2009. 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 with her roommate in a house and her roommate supports her. Claimant is widowed and has no children under 18. Claimant has no income and receives Food Assistance Program benefits. Claimant does have a driver's license and drives 3-4 times per month to doctor's appointments, Walmart and usually about 5-6 miles. Claimant does cook 2 times per day and cooks things like soup and hamburger helper. Claimant does grocery shop one time per month and needs help getting from the store. Claimant testified that she does clean her home by doing the dishes, wiping the table and doing laundry and she watches TV 5-6 hours per day. Claimant testified that she can stand for 15 minutes, sit for 30 minutes, and walk a half a block. Claimant testified that she cannot squat but she can bend at the waist. Claimant testified that her knees ache and pop and she can shower and dress herself and tie her shoes and can touch her toes with difficulty. Claimant testified that her level of pain on a scale from 1-10 without medication is 10 and with medication is a 6. Claimant testified that she is right handed and her hands and arms ache and swell with arthritis and her legs and feet are numb and burning with neuropathy. Claimant testified that the heaviest weight that she can carry is less than a gallon of milk repetitively and usually the heaviest thing that she can carry is a gallon of milk. Claimant testified that she does smoke a half pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant testified that in a typical day she gets up and showers and takes her medication and gets dressed and sits and falls asleep for about a 3 hour nap. Claimant then says she fixes lunch and folds clothes and washes dishes. She makes dinner, cleans the kitchen and sits and sleeps. Claimant was last in a hospital March 2010, because she had a heart attack. Claimant testified that her roommate usually finishes her tasks for her and nobody will hire her because she can't really groceries and she is hard to take care of.

A medical examination report dated [REDACTED] indicates that the claimant was 5'7" tall and weighed 270 pounds and her blood pressure was 116/80. She walked with a slight limp and she was obese and uncomfortable. The clinical impression is that claimant was stable and that she did not require assistive devices for ambulation. She could frequently carry 10 pounds or less and never carry 20 pounds or more. Claimant could stand or walk less than 2 hours in an 8 hour day and could sit less than 6 hours in an 8 hour work day. Claimant could do simple grasping and fine manipulating with both of her upper extremities but not reaching or pushing and pulling. Claimant could not operate foot or leg controls with either feet or legs. Claimant has some mental limitations in the form of sustained concentration and interaction (pp. 3-4).

An [REDACTED] medical examination report indicates that claimant was 5'7" tall and weighed 270 pounds and her blood pressure was 116/80. The clinical impression is that she was deteriorating and she could occasionally carry less than 10 pounds and she could stand or walk less than 2 hours in an 8 hour work day and she could do simple grasping, reaching and fine manipulating but not pushing and pulling with both of her upper extremities and cannot operate foot or leg controls (pp. 1-2).

The claimant was admitted in [REDACTED] due to an acute ST elevation myocardial infarction. She underwent successful angioplasty and stenting with thrombectomy (pp. 24, 56-58).

In [REDACTED] the claimant was 66" tall and 272 pounds. Her blood pressure was 116/65. The chest revealed mild bronchial breath sounds with prolonged expiratory phase. No accessory muscles were used. Heart sounds were normal. There was no clubbing or cyanosis. There were moderate varicosities. There was no edema. Grip strength was intact and dexterity was unimpaired. Motor strength and tone were normal. Sensory functions were intact. Deep tendon reflexes were 2+ and symmetrical and the lower extremities. She walked with a small stepped wide based gait without the use of an assist device. Pulmonary function studies showed mild obstructive disease (Records from DDS).

A mental status examination dated [REDACTED] showed the claimant was clear, logical and spontaneous. She may see her deceased son or husband but denied any other hallucinations. She was mildly depressed (unnumbered page between 12 and 13). Diagnosis was depressive disorder (p. 13).

The physical examination in [REDACTED] reported that she was obese weighing 272 pounds at 66" tall. She had bronchial breath sounds. However, pulmonary function studies were within normal limits. She had normal grip strength and normal range of motion in all joints. Her strength and tone were normal. She had intact sensory. She walked with a small stepped wide based gait without an assistive device (pp. 90-95).

The mental status in [REDACTED] noticed that she had good contact with reality. Her mental activity was clear, logical, and spontaneous. She was mildly depressed and fully oriented.

This Administrative Law Judge did consider all of the approximately 100 pages of medical reports contained in the file in making this decision.

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.

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

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'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.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 15, 2011

Date Mailed: March 16, 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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