

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-95
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: July 29, 2010
St. Joseph 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 July 29, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED], Attorney-at-Law, [REDACTED].

This hearing was originally held by Administrative Law Judge Ivona Rairigh. Ivona Rairigh is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

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 June 30, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On July 29, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

- (3) On August 3, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On August 13, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 7, 2009, the State Hearing Review Team again denied claimant's application stating that claimant can perform her past work as a security guard.
- (6) The hearing was held on July 29, 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 August 23, 2010.
- (8) On August 24, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: This case has been returned by the office of Administrative Hearings with newly provided evidence. This new evidence does not materially add to the evidence already in the file. Additionally, this new evidence supports that claimant's overall condition continues to be stable. The claimant retains the physical residual functional capacity to perform light exertional work; there is no evidence of psychiatric limitations. The claimant's past work was light and unskilled in nature. Therefore, the claimant retains the capacity to perform her past relevant work. Medicaid P is denied per 20 CFR 416.920(e). Retroactive Medicaid P was considered in this case and was also denied. State Disability Assistance is denied per PEM 261 due to the capacity to perform past relevant work. Listings 4.04, 12.04, and 12.06. were considered in this determination.
- (9) On the date of hearing claimant was a 43-year-old woman whose birth date is April 6, 1967. Claimant is 5'6" tall and weighs 310 pounds. Claimant completed the 12th grade. Claimant is able to read and write and does have basic math skills but does not have good spelling skills.
- (10) Claimant last worked December 2007 as a security guard at [REDACTED]. Claimant has also worked in fast-food at [REDACTED] and gas stations and was receiving unemployment compensation benefits until they stopped in March 2009.
- (11) Claimant alleges as disabling impairments: myocardial infarction/angina and a bipolar disorder and anxiety.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a limited ultrasound of the abdomen conducted December 30, 2008 indicates that the conclusion is a normal right kidney, stable gallbladder 5 mm echogenic polyp, fatty infiltration of the liver versus other diffused hepatocellular disorder stable. (Page A1.)

A June 19, 2010 discharge summary indicates that claimant had a laparoscopic cholecystectomy. (Page A3.)

A progress note from St. Joe dated August 16, 2010, indicates that claimant was marginally stable and her current GAF score was 45. (Page A4.)

A Medical Examination Report dated June 10, 2009 indicates that claimant was 5'6" tall and weighed 272 pounds. Her blood pressure was 120/80. She was normal in all areas of examination except for range of motion of both ankles.

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 which support claimant's contention of disability. The clinical impression is that claimant is stable. Claimant can occasionally lift or carry less than ten pounds. She could stand or walk less than two hours in an eight-hour workday. She did require assistive devices for ambulation. She could use both of her upper extremities for simple grasping, reaching, pushing or pulling and fine manipulating. She could operate foot and leg controls in both feet and legs. (Pages 29 and 30.) 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 had no mental limitations. (Page 31.)

An MRI of the cervical spine without contrast conducted November 15, 2007 indicates a C4-C5 left disc extrusion with mild left spinal cord compression. At C5-C6, right paracentral disc extrusion with focal mild cord compression to the right of midline (Page 34.)

A February 11, 2009 Medical Examination Report indicates that claimant's blood pressure was 132/76. Her pulse was 64. Temperature was 97.9 Fahrenheit. Height is 5'6" tall, weight 253 pounds, body mass index was 42.49. KG/M2. Her general appearance was normal except obese. Her neck was supple without lesions, bruits, or adenopathy, thyroid nonenlarged and nontender. The heart had no cardiomegaly or thrills; regular rate and rhythm, no murmur or gallop. Lungs were clear to auscultation and percussion. In the abdomen, bowel sounds were normal. There was no tenderness, no organomegaly, masses or hernia. The back was normal except diffuse tenderness. The neurological area cranial nerves 2 through 12 were normal. Sensation to pain, touch and proprioception is normal. DTRs were normal in the upper and lower extremities. No pathological reflexes. Respirations were 20. Pain level was zero. (Page 37.)

A diagnostic radiology x-ray of the knees dated May 20, 2009 indicates that her mild osteoarthritic degenerative change. Mild narrowing is seen in the medial, femorotibial joint spaces. Mild spurring is seen mainly from a medial femoral patella. No acute fracture, dislocation or bone destruction. Findings are symmetrically noted bilaterally. Soft tissues are negative, other is negative. (Page 45.) An admission date of December 29, 2008 indicates that claimant was diagnosed with a gastric ulcer. The chest x-ray should show no acute changes. Temperature was 97.8, pulse 73, respiration is 24, and blood pressure is 154/93. She was 98% O2 saturation on room air. (Page 51.) A surgical pathology report dated December 31, 2008 indicates that claimant was diagnosed with acute ulcer, viral inclusions, intestinal metaplasia and carcinoma are not seen. H. pylori organisms are not identified. (Page 71.)

A September 2, 2008 Supplemental Security Income decision by the Social Security Administration indicated the following: We have considered the combined effect of all conditions and the ability to work. We are determined that your condition is not expected to remain severe enough for 12 months in a row to keep you from working. In deciding this, they considered the medical evidence, your statements and how your condition affected your ability to work. You said that you were disabled because of degenerative disc disease, fibromyalgia, degenerative joint disease, coronary artery disease, anxiety, depression, high blood pressure and ADHD. The medical information shows you have had treatment including surgery for disc disease. Although there are still changes in your neck, your arms, symptoms are improving. Your recent stress test shows satisfactory heart function. This comes from fibromyalgia and stress on a joint's limit and how many times you can move it. You are able to walk without assistance. (Page 175.) Your blood pressure is controlled currently. You have difficulty adapting to change and responding to coworkers and supervisors, but you are able to understand,

recall and carry out basic tasks. You realize your conditions may prevent you from working at the present time while recovering from surgery. However, when we apply the Social Security Rules to the medical evidence we found by January 2009, you would be able to do work that is easy to learn and routine to perform and does not require heavy lifting, frequent crouching, or climbing or interacting with the public. (Page 130.) An EMG report dated December 11, 2007 indicates that claimant had mild median mononeuropathy at the wrists bilaterally and had an unremarkable study for bilateral cervical radiculopathy in the muscles tested. (Page 116.)

A January 28, 2008 hospital admission indicates that claimant had an anterior cervical disc removal of C4-C5 with fusion. The patient did well postoperatively. Her arm pain was resolved. She had no numbness or tingling. Her strength was normal. She had no trouble swallowing. She was afebrile, vitals were stable. Incision was clean, dry and intact. She was able to swallow without difficulty. Strength and sensation were intact in the upper and lower extremities. Heart was regular. Lungs were clear. Abdomen was soft, nontender with good bowel sounds. Claimant was discharged in stable condition with a cervical collar. (Page 107.)

A recent SOLQ indicates that claimant was approved for RSDI income through the Social Security Administration with a disability onset date of August 5, 2010. The Social Security Administration conducted the hearing on May 12, 2010.

Because of the Social Security Administration determination, it is not necessary for this Administrative Law Judge to discuss the issue of disability for August 5, 2010 forward. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits if not previously done. Claimant's application was June 30, 2010 with a retroactive application for May, April, and March 2010.

Claimant alleges the following disabling mental impairments: Bipolar disorder, anxiety, and 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 [REDACTED], published by the [REDACTED]... 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 43), with a high school education and an unskilled work history who is limited to light work is not considered disabled. For the record, the Social Security Administration did consider the prior months and determined that claimant was not disabled prior to August 5, 2010. This Administrative Law Judge is bound by the Social Security Administration in its determination.

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 benefits prior to the August 5, 2010 disability onset date.

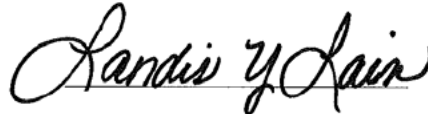
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled pursuant to the Social Security Administration's determination that claimant has a disability onset date of August 5, 2010. Therefore, claimant meets the definition of medically disabled under the Medical Assistance program and/or the State Disability Assistance program as of August 5, 2010.

Accordingly, the department's decision is partially REVERSED. The department is ORDERED to initiate a review of the June 30, 2010 application, if it has not already done so to determine if all of the nonmedical eligibility criteria are met from August 5, 2010 and forward. The department shall inform the claimant of its determination in writing.

This Administrative Law Judge also finds that claimant did not meet the definition of medically disabled under the Medical Assistance or State Disability Assistance programs as of June 30, 2010 application date. Claimant also did not meet the definition of medically disabled for the retroactive month of May, April and March 2010 based upon the Social Security Administration's determination that claimant's disability onset date is August 5, 2010.

Accordingly, the department's decision is partially AFFIRMED for the months of March, April, May, June and July 2010.



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

Date Signed: June 28, 2011

Date Mailed: June 29, 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/tg

cc:

