

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-12550
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 11, 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 claimant's request for a hearing. After due notice, an in-person hearing was held on February 11, 2010. Claimant was represented at the hearing by [REDACTED].

This hearing was originally held by Administrative Law Judge [REDACTED] is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. 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 retroactive Medical Assistance (retro 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 October 27, 2008, claimant filed an application for Medical Assistance, and retroactive Medical Assistance benefits alleging disability.
- (2) On February 2, 2009 the Medical Review Team denied claimant's application stating that claimant's impairment's do not meet duration.
- (3) On January 1, 2009, the department caseworker sent claimant notice that her application was denied.

- (4) On May 1, 2009, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On December 22, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the decision is being made on medical information in the file based on the October 2008 application date. If her current decision is needed for updated medical information will be needed. The information in file show the claimant had some pain in multiple trigger points without significant loss of function. Grip was intact. She had some limitation of motion due to pain. There were no other significant abnormal findings. The claimant retains the physical residual functional capacity to perform medium work. The claimant's past work was as a cashier. Therefore, claimant retains the capacity to perform her past relevant work. MA-P is denied per 20CFR416.920(e). Retro-MA-P was considered in this case and is also denied.
- (6) The hearing was held on February 11, 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 November 15, 2011.
- (8) On November 17, 2011, the State Hearing Review Team approved claimant from February 2010 to current for Medical Assistance and denied claimant prior to February 2010 stating in its analysis and recommendation: The claimant was approved for SSI and Social Security/Widows Disability benefits effective February 2010. Therefore, MA-P benefits are approved effective February 2010. Prior to February 2010, the information in the file showed the claimant had some pain in multiple trigger points without significant loss of function in 2008. Grip was intact. She had some limitation of motion of the knee and shoulder in 2009. However, the objective evidence does not support the significant level of limitation given on the DHS-49 form. The claimant was approved for SSI benefits in March 2011 effective February 2010. Therefore, MA-P and Retro-MA-P is approved effective February 2010. Prior to February 2010 the claimant's impairments did not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retained the capacity to perform light work prior to February 2010. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical-vocational guidelines would direct the finding of not disabled given the claimant's age, education and residual functional capacity. (RFC). Therefore, based on the claimant's vocational profiled closely

approaching advanced age prior to February 2010, 12th grade education and history of unskilled and semi-skilled work, MA-P is denied using Vocation Rule 202.13 as a guide prior to February 2010. Retroactive MA-P was considered in this case and is also denied prior to February 2010. At the medical review in November 2012, please check to see if the claimant is in current payment status or not. If the claimant is in current payment status at the medical review, no further action will be necessary. However, if the claimant is not in current payment status at the medical review, please obtain updated application forms (DHS-49 forms) and obtain updated medical records.

- (9) On the date of hearing claimant was a [REDACTED]. Claimant was 5' 3" tall and weighed 120 pounds.
- (10) Claimant has worked as a cashier, and as a self-employed drywall finisher.
- (11) Claimant alleges as disabling impairments: Hepatitis C, degenerative cervical disease, right arm weakness, fatigue, shortness of breath, blurred vision, spine dysfunction, and a torn right rotator cuff as well as neck and shoulder pain.

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 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 is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in December 2008 the claimant had full range of motion of the right shoulder and negative impingement signs. She had multiple trigger point areas. She had good handgrip. Fair generalized muscle tone. No tenderness to the shoulder area, cervical spine or thoracic spine. She had full range of motion of the left shoulder. Her examination was otherwise unremarkable. The impression was generalized degenerative changes throughout her shoulder but no surgical intervention was indicated (records from DDS). In December 2008 the claimant had decreased range of motion of the left knee, right shoulder and right elbow due to pain. She had tingling and numbness in the right 4th and 5th digits. Her mood was depressed and her affect was flat. The remainder of the examination was normal (Page 6). In October 2009, claimant was diagnosed with Hepatitis C (C1-31). Her examination was unremarkable (C1-32). In January 2010, the claimant had a flat affect and right should pain. She had decreased range of motion of the left knee with a palpable mass on the posterior left knee. She had decreased motion of the right shoulder. She had numbness and tingling in the 4th and 5th digits on the right hand. Her mood was depressed (C1-45). The doctor indicated she was not able to lift any weight and could not stand/walk even 3 hours in an 8 hour work day. The claimant was approved for SSI and Social Security/Widows disability benefits in March 2011 with a February 2010 onset.

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. 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 no disabling mental impairments:

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 person whose closely approaching advanced age prior to February 2010, with 12th grade education and a history of semi-skilled work who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.13.

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.

Accordingly, the department's decision is partially AFFIRMED for all dates before February 2010. However, the claimant was approved for SSI benefits in March 2011 with a disability onset date of February 2010, therefore, claimant meets the definition of medically disabled for purposes of medication assistance benefit eligibility for the months of February 2010 forward. Therefore, the department's decision for February 2010 forward is REVERSED. The department is ORDERED to reinstate claimant's application for February 2010 forward in accordance with the Social Security Administration determination and shall if it has not already been done so, determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing. The department shall conduct a medical review in November 2012. At that time the department is ORDERED to check to see if claimant is in current payment status or not with the Social Security Administration. If the claimant is in current payment status at medical review, no further action will be necessary. If the claimant is not in current payment status at the medical review, the department is ORDERED to assist claimant to obtain updated application and medical forms (DHS-49 forms) and obtain updated medical documents.

/s/

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

Date Signed: 1/3/12

Date Mailed: 1/3/12

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/ds

■ [REDACTED]