

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-15416
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 2, 2010
Genesee 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 March 2, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Whether claimant meets the disability criteria for Medical Assistance (MA-P), retroactive Medical Assistance and/or 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 February 25, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits.

(2) On June 1, 2009, the Medical Review Team denied claimant's application stating that claimant could perform her prior work.

(3) On June 30, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On October 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 29, 2010, the State Hearing Review Team again denied claimant's application stating that additional medical information was suggested to assess the severity of claimant's impairment.

(6) The hearing was held on March 2, 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 April 21, 2010.

(8) On April 22, 2010, the State Hearing Review Team approved claimant stating:

This claim was returned by the Office of Administrative Hearings with requested examinations. The evidence supports that the claimant would be reasonably limited, performing light exertional tasks of a simple and repetitive nature. Benefits for this claim become eligible as the claimant becomes 55 years old. This took place per Social Security Administration (SSA) guidelines on September 19, 2009. Therefore, benefits including retroactive MA-P prior to September 2009 are denied as Vocational Rule 202.13 would direct that the claimant would retain the ability to perform other tasks. From September 2009 to present, Vocational Rule 202.04 directs a finding of disabled. The claimant's impairments do not meet/equal the intent or severity of an appropriate Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a light exertional range of simple and repetitive work. However, based on the claimant's vocational profile of 55 years old, high school education, and history of sedentary skilled employment, MA-P is approved using Vocational Rule 202.04 as a guide, effective September 2009. Retroactive MA-P was considered in this case

and is denied using Vocational Rule 202.13 as a guide. State Disability is approved in accordance with PEM, Item 261, effective as of September 2009. Prior to attaining the age of 55 on September 9, 2009, Vocational Rule 202.13 directed a denial to other work. This case needs to be reviewed for continuing benefits in April 2017. At review, the following needs to be provided: prior medical packet; DHS-49B, F, and G; DHS-49, DHS-49D, DHS-49E and DHS-49I; all hospital and treating source notes and test results; all consultative examinations, including those purchased by the SSA/the Disability Determination Service. Listings 1.02 and 1.04, 2.02, 3.03, 4.04 and 12.06 were considered in this determination.

(9) Claimant is a 55-year-old woman whose birth date is [REDACTED]

Claimant is 5' 5" tall and weighs 232 pounds. Claimant is a high school graduate and has an associate's degree in [REDACTED] 1995. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in 2006 for [REDACTED] as a clerical worker. Claimant has also worked for [REDACTED] as a work study person in the computer lab, and filing and answering phone. Claimant has also worked as a dish washer.

(11) Claimant alleges as disabling impairments: hypertension, diabetes mellitus, obesity, asthma, hypertension, anxiety, panic attacks, back problems, depression and anxiety, coronary artery disease, numbness in her feet and legs, and a pinched nerve and scoliosis in her back.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2006. Claimant is not disqualified from receiving disability at Step 1.

Since the State Hearing Review Team has approved claimant from September 2009, forward, this Administrative Law Judge only has to decide whether or not claimant was disabled from February 25, 2009, forward.

The objective medical evidence on the record indicates that:

A psychological report, dated March 30, 2010, indicates that claimant was oriented to time, person and place. She repeated 6 numbers forward and 5 numbers backward and recalled 3 of 3 objects 3 minutes later. The past few presidents were very slow. "I can see his face, but can't remember his name, Bush, Clinton, Bush's father, Reagan and Carter." Her date of birth was given as September 20, 1954. Five large cities were L.A., New York City, Houston, Dallas and Detroit. Current famous people were: John McCain, Sarah Palin and John Travolta. On calculation test: 100 minus 7 equals 93, 86, 79, 72, 65. 2 plus 3 equals 5, 7 plus 9 equals 16, 3 times 8 equals 24, and 7 times 9 equals 63. In abstract thinking: The grass is already greener on the other side was interpreted to mean: you think somewhere else is better than what you got. Don't cry over spilled milk was interpreted to mean: Don't worry about things that aren't really important. A bush and a tree were alike in that they were green and grow outside, and they were different in that one's big, the tree. On judgment questions: Claimant would probably mail a letter if she found a stamped, addressed envelope, and she would tell someone about it if she

discovered a fire in a theatre. She was diagnosed with a history of severe panic attacks with medical complications and unresolved grief issues. Her AXIS GAF was 47. It was recommended that she be continuing outpatient psychiatric treatment designed to reduce psychiatric symptoms and stabilize daily function. (New Information, pages 51-53)

A Medical Examination Report, dated April 1, 2010, indicates the claimant is a 55-year-old, obese, white female. Her weight was 236 pounds and her height was 5' 5". Her blood pressure was 234/140 in the left arm in the sitting position. This was repeated, and remained high. The patient was offered medication to bring her blood pressure down and she refused. Temperature was normal. Respirations are 18. Pulse was 88 per minutes, regular, with good volume. Snelling was 20/30 in the right eye, 20/30 in the left eye. This was without corrective lenses. Color was within normal limits. Her HEENT was normocephalic. Pupils were equal, round and reactive to light and accommodation. Extraocular muscles were intact. Fundoscopy reveals very minimal evidence of retinopathy, although the Fundoscopy was not well-visualized. The drug was not injected. The neck was supple. No evidence of any lymphadenopathy or thyromegaly. Carotids are bilaterally palpable with no bruits. The chest was clear to auscultation and percussion. Heart sounds S1 and S2 were heard. No gallop or murmur. No JVD. No edema. The abdomen was soft. Bowel sounds were present and normal. Claimant was obese and non-tender to palpation. The cranial nerves II-XII were intact. CNS examination otherwise grossly within normal limits. In the musculoskeletal system: the claimant has some discomfort on flexion. She was able to achieve flexion up to 80 degrees, extension 20 degrees, left lateral flexion to 20 degrees, right lateral flexion to 20 degrees. She was diagnosed with morbid obesity, diabetes mellitus Type II, hypertension, scoliosis, bronchial asthma since childhood, anxiety neurosis, panic attacks, osteoarthritis in the lumbar spine, and diabetic retinopathy. (Pages 54, 56)

A medical report, dated October 5, 2009, indicates that claimant has a small gallbladder polyp without evidence of gallstones or pericholecystic inflammatory change. (Page C7)

This Administrative Law Judge did read the approximate 160 pages contained in the file.

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

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 from the February 25, 2009 application date until October 31, 2009.

The department's decision is REVERSED from the new application of November 2009, forward, based upon the State Hearing Review Team's decision. Using claimant's vocational profile of 55 years old, with a high school education and history of sedentary work, MA-P is approved using Vocational Rule 202.04 as a guide, effective September 2009. Retroactive MA-P was considered in this case and is denied until August 2009, using Vocational Rule 202.13 as a guide. State Disability Assistance is approved in accordance with PEM 261, effective as of September 2009. Prior to attaining the age of 55 on September 19, 2009, Vocational Rule 202.13 directed a denial to other work.

The department is ORDERED to conduct a review for continuing benefits in April 2017. At review, the department shall assist claimant in providing: prior medical packet; DHS-49B, F, and G; DHS-49, DHS-49D, DHS-49E and DHS-49I; all hospital and treating source notes and

test results; all consultative examinations, including those purchased by the SSA/the Disability Determination Service.

The department is ORDERED to reinstate the November 5, 2009 application and the retroactive Medical Assistance application, as the February 25, 2009 and November 5, 2009 applications were consolidated for purposes of this hearing. The November 5, 2009 application is approved, as well as two months retroactive, under the February 25, 2009 application for the months of September and October 2009, based upon the State Hearing Review Team's assessment and this Administrative Law Judge's determination that the State Hearing Review Team's assessment is correct in this case.

The department is ORDERED to reinstate claimant's February 25, 2009 application and to open an ongoing Medical Assistance and State Disability Assistance benefit case from September 2009, forward, if claimant is otherwise eligible for benefits.

/s/
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 28, 2010

Date Mailed: June 29, 2010

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.

2010-15416/LYL

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cc:

