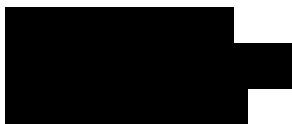


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-17404

Issue No: 2009, 4031



Kalamazoo 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 [REDACTED]. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

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 July 1, 2009, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On September 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On September 28, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On December 29, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 12, 2010, the State Hearing Review Team again denied claimant's application stating that there was not sufficient evidence to accurately assess physical conditions and no evidence related to

psychiatric allegations and requested a psychiatric or psychologist evaluation and a complete physical examination.

- (6) The hearing was held on March 9, 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 March 29, 2011.
- (8) On April 13, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the claimant passed away on September 7, 2010. This decision was made prior to her death. A cause of death is unknown and whether she died from her alleged disabilities. A copy of her death certificate of medical records related to her death should be provided. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and also denied.
- (9) On the date of hearing, claimant was a [REDACTED] woman whose birth date was [REDACTED]. Claimant is 5' 5" tall and weighs 150 pounds. Claimant was a high school graduate and was able to read and write and does have basic math skills, and she could count money.
- (10) Claimant last worked approximately 2005, handing out samples at [REDACTED]. Claimant has also worked sell [REDACTED], as a Prep Cook, Secretary and as a Receptionist.
- (11) Claimant alleges as disabling impairments: mitral valve prolapsed osteo arthritis, osteoporosis, chronic constructive pulmonary disease, emphysema, hypertension, depression, irritable bowel syndrome, migraines.

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 and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

Claimant passed away Tuesday, September 7, 2010. The representative did not notify the department that claimant was deceased nor did they provide any additional medical information to the Administrative Law Judge to make this decision. However, there was a medical examination report filed which this Administrative Law Judge did take into consideration when making this decision.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she lived with her husband in a house and her husband supported her and that she was getting divorced and she was single. Claimant testified

that she had no children under 18 that lived with her and no income. She received \$100.00 per month in Food Assistant benefits. Claimant did have a driver's license and she drove herself 2-3 times per month to the grocery store, to the doctor's and the farthest she had to drive was 12 miles. Claimant testified she did cook everyday and cooked things like toast, oatmeal, microwave meals and hamburger. Claimant did grocery shop 2 times per month and she testified she did help with lifting but she usually made a list and she had problems figuring out the money. Claimant testified that she did dishes while she sat, did laundry and cleaned the bathroom and she usually played Sudoku for ½ hour per day and watched television most of the day and just listened to Fox News. Claimant testified she can stand for 15 minutes, sit for an hour, and walk for ½ hour at a time. Claimant testified she couldn't squat because of her hip but she could bend at the waist. Claimant testified that she could shower and dress herself but not always tired, she couldn't touch her toes. Claimant testified her level of pain on a scale from 1-10 without medication is a 10, and with medication it was a 6. Claimant was right handed and she testified that the fingers on her left hand hurt and that she had numbness in her legs. Claimant testified that she could carry 5 pounds and she continued to smoke a pack of cigarettes per day and her doctor told her to quit and she's trying to quit but she was not in a smoking cessation program. Claimant testified that she didn't drink or do drugs. That in a typical day she got up, drank coffee, watched the news and went to the bathroom. She would watch TV again and then lay on the couch. She let the dog out and then ate in the afternoon and talked on the phone. She went online and played games for an hour and then she would do the laundry and then she would fix something to eat, watch television again, took her meds and went to bed. Claimant testified that she was hospitalized 2 times in 2009 for suicide attempts. An April 16, 2010, medical report indicates that the claimant was tremulous due to withdrawal. The patient is cooperative in answering questions and following commands. The patient's immediate, recent, and remote memory is intact with normal concentration. The patient's insight and judgment were both appropriate. The patient provided good effort during the examination. Her blood pressure was 106/60. Her pulse was 106 and regular. Respiratory rate equals 14. Weight was 156 pounds. Height was 64" without shoes. Her skin was normal. Her visual acuity in her right eye equals 20/30 and in the left equals 20/25 without corrective lenses. The pupils were equal, round and reactive to light. The patient could hear conversational speech without limitations or aids. The neck was supple without masses. The chest breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. The heart there was regular rate and rhythm about enlargement. There is a normal S1 and S2. There was no organomegaly or masses. Bowel sounds were normal. The vascular area there was no clubbing, cyanosis or edema detected. The peripheral pulses were intact. The musculoskeletal area there was no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The patient could pick up a coin, button clothing and open a door. The patient had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting, and mild difficulty hopping. Range of motion studies were normal. The neurological area: cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Romberg testing is negative. The patient walks with a normal gait without the use of an assist device. The conclusion

was that she had some symptoms located in the sacroiliac joints bilaterally. There was no pelvic mal-rotation. She may have some mild degenerative arthritis in her back but it was relatively stable. She was on narcotic pain medications and had some mild withdrawal occurring due to not taking her other medications (Page A1- 7). This Administrative Law Judge did consider the entire record when making this decision. It should be noted that claimant's representative did not provide evidence of her death nor did the representative provide evidence of the cause of death. The claimant's representative did not provide a death certificate or any medical records relating to her death. Therefore, the record was closed April 18, 2011, more than a year after the date of hearing and approximately 6 months past the deadline of June 1, 2010, for the submission of additional medical information.

Death establishes a person's disability for the month of their death. BEM, Item 260.

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, anxiety, bipolar, and memory loss as well as 2 suicide attempts.

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.

It should be noted that claimant continued to smoke despite the fact that her doctor had told her to quit. Claimant was 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).

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 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. However, the department is ORDERED to determine whether or not claimant was otherwise eligible for medical assistance based upon disability in the month of September 2010, when claimant died.

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

Date Signed: 5/23/11

Date Mailed: 5/23/11

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

