

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-20590
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 22, 2010
Eaton 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 April 22, 2010. Claimant personally appeared and testified.

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 15, 2009, claimant filed an application for Medical Assistance and State Disability Assistance alleging disability. On December 11, 2009, [REDACTED] also filed an application on claimant's behalf for Medical Assistance and retroactive Medical Assistance benefits. The applications are herein consolidated based upon claimant's permission to do so.
- (2) On January 26, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On February 2, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On February 12, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 2, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.18.
- (6) The hearing was held on April 22, 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 June 14, 2010.
- (8) On June 18, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the evidence supports the prior findings of the Medical Review Team and the State Hearing Review Team. The claimant continues to reasonably retain the ability to perform a wide range of light exertional work of a simple and repetitive nature. The claimant's past relevant work skilled or unskilled are therefore not transferrable. The claimant's impairment's do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature. Therefore, based on the claimant's Vocational Profile of 44 years old, a less than high school education and a history of light unskilled employment, Medicaid-P is denied using Vocational Rule 202.17 as a guide. Retroactive Medicaid-P was considered in this case and is also denied. State disability is denied per PEM 261, because the nature and severity of the claimant's impairment's would not preclude work activity at the above stated level for 90 days. Listings 1.02, 1.03, 1.04, 3.02, 3.03, 4.01, 5.01, 9.08, 11.14, 12.02, and 12.04 were considered in this determination.
- (9) Claimant is a 44-year-old woman whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 269 pounds. Claimant attended the 9 grade and has no GED and was in special education for all classes according to her testimony. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked 2005 at [REDACTED] in the bakery. Claimant has also worked as a cook and in a factory and lives off of her son's SSI disability check, because her son is disabled.
- (11) Claimant alleges as disabling impairments: arthritis, back pain, carpal tunnel syndrome, chronic obstructive pulmonary disease (COPD), asthma, heart disease, stomach issues, diabetes, learning disorder, and depression as well as tendinitis, fibromyalgia, muscle spasms and twitching, and the requirement to be on oxygen.

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a medical examination report of May 3, 2010, indicates that the general examination reveals an obese lady who ambulates without an assistive ambulatory device. She does carry a portable oxygen tank and can do so without difficulty. Vital signs: height is 65.5" in shoes. Weight is 282, pulse 80, blood pressure 135/76, and her pulse oximetry on 2 liters of O₂ is 96%. She has a respiratory rate of 16 and unlabored. At the behest of the FIA, pulmonary function studies were done. The claimant indicated that she used her proair roughly 2 and a half prior to the first attempts. The claimant paroxysms of cough after each attempt and efforts were minimal and quite variable. The claimant was given an Albuterol inhaler. Roughly 10 minutes after that she had a much better trial which basically indicated normal spirometry. It should be noted that the claimant is on 2 liters of O₂ that was prescribed by a discharge physician when she was in the hospital in February 2010. The assessment is a history of chronic obstructive pulmonary disease which was diagnosed roughly 2 years ago. The claimant has multiple hospital admissions. She estimates between 4-6 times per year in the last one was roughly a week ago, where she had a cardiac workup done which she states was negative. She is not using [REDACTED]. She only has a bit of her Albuterol left. She does have a [REDACTED] nebulizer at home. Her lungs today were clear and her pulmonary function test although she was on 2 liters of oxygen after 2 puffs of [REDACTED] was normal. Fibromyalgia, chronic leg pain syndrome, and restless leg syndrome the claimant has had these problems for more than a decade. She advises when she had Requip and Lyrica she was much better. She is able to ambulate without an assistive ambulatory device. She has adult onset diabetes and she has been up for glucophage. She denies any significant weight loss over the past year. The doctor was uncertain whether or not claimant needed the oxygen. (new information pp. 2-3)

Claimant was admitted to the hospital [REDACTED] and discharged [REDACTED] with asthma exacerbation, type 2 diabetes mellitus, and a history of depression and anxiety and tension headaches. She was admitted into the emergency department for wheezing and coughing but had no pneumonic infiltrates seen on the x-ray. It was felt that she had acute bronchitis and she was treated with corticosteroids, anti-biotics, bronchodilators and her response was favorable. She was a diabetic and her accu-checks were monitored with most of the numbers falling in the lower mid 150's and no readings above 200. She made a good improvement and remained afebrile throughout the hospitalization. She was found to be significantly hypozemic with a room air oxymetry of 87% at rest and therefore arrangements were made for home oxygen therapy.

A physical examination of February 17, 2010, indicates that she was awake, alert and oriented. She was in mild respiratory distress. Her vital signs were 142/64, and her pulse rate was 110, respiratory rate was 16 and she was 98.5 and 99% on 6 liters of air. She had respiratory distress. Her skin had no skin turgor and no rashes. Her pupils were equal, round, regular and reactive. Her mouth had moist mucous membranes. She had no neck stiffness. She had bilateral wheezes in her respiratory system. In the cardiovascular area she had S1-S2 and tachycardia and the GI was soft, non-tender, non-distended with positive bowel sounds. In the genital urinary area she had no

costovertebral angle tenderness. In the lower extremities there was no edema. In the neurological area there were no focal deficits. The chest x-ray was negative.

A psychological examination dated February 12, 2009, indicates that claimant scored a verbal IQ of 88, a performance IQ of 84, and full scale IQ of 85, which puts her in the low average range of intelligence. She had a reading grade level of 5.1, sentence comprehension of 5.1, spelling of 3.5, and arithmetic of 4.5. She was oriented to time, place and person. She could recall 5 digits forward and 3 digits backward. She could recall 3 of 3 objects after a 3 minute time lapse. She knew her birthday and could correctly name 4 recent past presidents. She exhibited low average capabilities for a general fund of information. She could correctly name 5 large cities, 5 currently famous people, and 3 current events. She completed serial 7's with 5 mistakes. She struggled with the task. In her abstract reasoning, she exhibited average capabilities for abstract reasoning. She stated that the proverb the grass is greener on the other side of the fence meant that things looked better somewhere else. She stated that the proverb don't cry over spilled milk meant, don't get upset over little things. In similarities and differences, she indicated that a bush and a tree were alike and they were both shrubs, she indicated that they were different in size. She exhibited average capabilities for social judgment and comprehension. She stated that if she found a stamped envelope in the street, she would mail it. She stated that if she was the first person in a theatre to discover a fire she would tell an usher. She was diagnosed with major depressive disorder and anxiety disorder and a dependent personality disorder. She appeared to have moderately severely impaired capabilities to interact appropriately or affectively with co-workers and supervisors and to adapt to changes in a work setting. It is suspected that her psychological struggles will result in moderately severe impaired capacity to do work related activities. Her positions would have to offer their opinions regarding her level of impairments to do work related activities as a result of her multiple medical problems (pp11-12)

Claimant has been handling her own funds and has been her sons payee for a number of years. It might be helpful to monitor her effectiveness in managing family funds. Her prognosis is poor and she needs multiple Social Services assistance with her disabled son and psychological treatment (p. 13)

Claimant testified on the record that she helps her son with finances, shops daily as he has a hard time comprehending and she has to remind him to do things a lot. Claimant testified that she does have a driver's license but her car is broken and that she takes the bus 5 times a month and usually a bus ride about a half an hour ride. She does cook every day and makes macaroni and cheese, meat and potatoes, and she does grocery shop 2 times per month and uses the mobile cart. Claimant testified that she does pick up in the living room, do dishes, and dusts, and she used to crochet and she usually watches TV and it's on all day. Claimant testified that in a typical day she makes coffee, turns on the television, makes calls, talks to her son, calls the department of Human Services, does some mild housework and she cooks and takes the bus to her apartment and she calls to go to the emergency room. Claimant testified on the record that she can stand for 15 minutes, sit for 30 minutes at a time, and walk 40 yards.

Claimant testified that she cannot squat because of her balance but she can bend at the waist, shower and dress herself, tie her shoes and touch her toes if she is sitting. Claimant testified that her level of pain on a scale from 1-10 without medication is a 9-10 and with medication is a 4. Claimant testified that she is right handed and that her wrists hurt and she does have fibromyalgia. Claimant testified that the heaviest weight that she can carry is 20 pounds and she only drinks alcohol on the holidays but does not take drugs or smoke.

This Administrative Law Judge did consider all 598 pages of medical reports contained in the file in addition to the new information submitted by claimant in making this decision.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, anxiety, and panic attacks.

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 a 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 44), with a less than 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.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 21, 2010

Date Mailed: July 21, 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.

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