

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-20980
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: May 19, 2010
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jay W. Sexton

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 May 19, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

This hearing was originally held by Administrative Law Judge Jay Sexton. Jay Sexton 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 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 August 3, 2009, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On December 22, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior relevant work.

- (3) On December 30, 2009, 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 1, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant has a lot of complaints but her physical examination was basically unremarkable. Her mental status showed she was somatically pre-occupied but thought processes were relevant and logical. The claimant's impairments 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 simple unskilled medium work. Therefore, based on the claimant's vocational profile of closely approaching advanced age at 52, college education and a history of semi-skilled work history, MA-P is denied using Vocational Rule 203.22 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (6) The hearing was held on May 19, 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 1, 2011.
- (8) On April 4, 2011, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the objective medical evidence does not support the findings of the MRT or SHRT. It is reasonable that the claimant would be limited beyond the limitations imposed by the prior determinations. The claimant would retain the ability to perform light exertional tasks of a simple and repetitive nature. The claimant's impairments 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 53 years old, at least a high school education and a history of sedentary skilled employment, MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02, 1.03, 1.04, 11.01, 11.14, 12.04, 12.06, 12.07, 12.08, and 14.02 were considered in this determination.

- (9) On the date of hearing claimant was a 53-year-old woman whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 115 pounds. Claimant is a high school graduate and attended [REDACTED] for 6 semesters where she studied psychology.
- (10) Claimant last worked as a medical [REDACTED] from 1987 through 1989. Claimant graduated from the [REDACTED] program at [REDACTED] and she was a college graduate as of [REDACTED].
- (11) Claimant alleges as disabling impairments: back and neck pain, migraines, depression, fibromyalgia, herpes, gingivitis, anxiety, chronic vascular migraine headaches with aura, benign essential head tremor, chronic fatigue syndrome, and sleep disorder, hypertension, irritable bowel syndrome, interstitial cystitis, radiation damage to bladder, vagina and intestines, pelvic adhesions from cancer surgery, bilateral carpal tunnel syndrome, arthritis, tendinitis, left kidney ureter duplication anomaly, hypoglycemia, herpes simplex genital and oral, vertigo, spinal subluxations, degenerative disc disease, chronic ear abnormality, tenitis, squamous cell carcinoma of the cervix, hysterectomy and bilateral salpingo oophorectomy, radiation therapy and chemotherapy as well as post traumatic stress disorder.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in

the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the

ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychiatric evaluation dated [REDACTED] states that the claimant is in contact with reality. She was cooperative, talkative and very detailed about her physical problems and she often gave indirect responses to a direct question. She complained of being nervous but there were no motor coordination problems observed. She described her self-esteem as poor, complaining that she is sick all the time and can't work because she has no life and she can't have kids or sex. She was oriented, alert and spontaneous. Her speech was clear, coherent and fluent. Her thought processes were relevant, logical, connected and very somatically preoccupied. She denied black outs, delusions, hallucinations, paranoia, or persecutory ideations. She does obsess about her physical condition. She feels hopeless and worthless and she has thoughts of suicide in the past but not currently. She has no intentions or plans. She denies any suicide attempts or homicidal thoughts (p. 160).

She was fully oriented to time, person and place. She was able to recite 6 numbers forward and 4 numbers in reverse. She did recite the three objects that were named for her and could recall all three of them three minutes later. She correctly identified the current and previous president giving the names of Clinton, Bush and Carter as past presidents. She gave her birth date as [REDACTED]. She named 5 large cities as Tokyo, Beijing and New York City and a current famous person as Simon Cowell. The current event was Haiti. The claimant was able to subtract 7's from 100 and she correctly multiplied 3×4 and 7×8 . When asked to explain the grass is greener proverb, she stated, "people aren't satisfied with what they have and they think that other people are better off". When asked to explain the spilled milk proverb, she stated, "you can't change the past". When asked how a bush and a tree are alike, she stated, "they are forms of plant life". When asked how they were different, she stated, "one is bigger and one is smaller". When asked what she would do if she found a stamped addressed envelope, she stated, "put it in the mailbox". When asked what she would do if she discovered a fire in a theatre, she stated she would probably look for the fire alarm and find somebody to tell. When asked about her future plans she said she did not have any plans (p. 161).

Claimant was diagnosed with socialization disorder, dysthymia, anxiety disorder, histrionic personality disorder, as well as an axis 5 GAF of 50-55. She has the potential for becoming employed in a simple unskilled work situation on a sustained and competitive basis, but that prognosis is guarded pending medical resolution. She appeared to have no difficulty understanding, remembering, and following through with simple instructions and there appeared to be few restrictions to her ability to perform simple repetitive concrete tasks. She would be able to manage her own benefit funds (p. 62).

A [REDACTED] medical examination report indicates that claimant is 5'4" tall and weighed 112 pounds. Her pulse was 83, her blood pressure was 137/84. Corrected distance vision was 20/20 in the right eye and 20/20 in the left eye. The head was normocephalic. Eyes PERRL, EOMI and red reflexes present. The ears on the left, she has a pimple like skin lesion of the outer ear canal and on the right is unremarkable. She does not exhibit difficulty hearing in the exam room. The throat was clear, the neck had no thyromegaly. Lungs were clear throughout. Heart rhythm regular with no murmur or gallop. Abdomen was soft, benign and somewhat tender in the lower quadrants with no organomegaly or mass. The extremities are symmetric. The hands are free of atrophy, swelling or deformity, fine and gross dexterity is intact and sensory is full. Phalanges and tenils are negative. The grips are good at 32 pounds on the dominant right side and 30 pounds on the left. The shoulder range of motion is full although uncomfortable in the subacromial areas. The neck range of motion is full but painful on end ranges. Spurling's maneuver of the neck is negative. The spine is straight without deformity and straight leg raise is negative. Sensory is full in the lower extremities and muscle mass is equal. The hips are not irritable but they are tender over the greater trochanters. The gait is normal. The tandem gait is normal and strength is intact walking on heels and toes and squatting and recovering. The claimant is alert and oriented x3. She maintained good eye contact but was tearful toward the

end of the visit. Her thoughts were well organized and she appeared to make good effort. The impression was migraines, fibromyalgia, but she did not have the classic tender point. Chronic fatigue, irritable bowel syndrome, hypertension, interstitial cystitis, back and neck pain (p. 152).

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 the following disabling mental impairments: posttraumatic stress disorder, depression, anxiety.

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 person who is closely approaching advanced age (age 53), 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.

