

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: 2010-25193

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 27, 2010

Saginaw 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, a telephone hearing was held on April 27, 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 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 November 9, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the months of August, September, and October 2009, alleging disability.

(2) On January 6, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 11, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On February 22, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 23, 2010, the State Hearing Review Team again denied claimant's application stating that claimant could perform light work per 20 CFR 416.967(b).

(6) Claimant is a 47-year-old woman whose birth date is [REDACTED] Claimant is 5' 7" tall and weighs 244 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked in 2006 as a custodian, where she worked for 16 ½ years before she got sick.

(8) Claimant alleges as disabling impairments: Chronic Obstructive Pulmonary Disease (COPD), hypertension, diabetes mellitus and glaucoma, as well as asthma.

CONCLUSIONS OF LAW

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 receives a disability pension in the amount of \$ [REDACTED] per month, and she does receive Food Assistance Program benefits from the department. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that:

On January 23, 2009, the Social Security Administration gave claimant an unfavorable decision stating that there has been an assessment of the claimant's emphysema/COPD. However, the record reflects that claimant's FEV is 1.8 and FVC is 2.6, which is not equal to or less than what is required under Listings 3.02a and 3.02b. (Exhibit F) There is no evidence of chronic impairment of gas exchange. The record reflects no visual loss and the claimant had a cataract removed with surgery when she was 35 years old. The record is devoid of evidence of episodes of acidosis. (Exhibits F12 and F1) There is no evidence to show that the claimant's hypertension has affected any major organs fed by the circulatory system such as the heart, brain, kidneys or eyes. With regard to claimant's obesity, there is no listing criteria in Appendix I specific to the evaluation of obesity impairments. However, SSR 02-1 requires consideration of obesity in determining whether a claimant has a medically determinable impairments that are severe, whether the impairments meet or equal any listing, and finally, in determining the residual functional capacity. Considerations were taken into account by the Social Security Administration which found that no treating or examining medical source had specifically attributed additional, accumulative limitations to claimant's obesity. A subsequent pulmonary function test failed to reveal a loss of breath capacity contained in the listings.

A physical examination report, dated November 6, 2009, indicates that claimant has full range of motion in all extremities. (Pages 16, 17) Claimant was mentally alert and oriented to person, place and time. There was no evidence of mental deficit. She did appear to have significant shortness of breath with very minimal exertion. Attempts to get on and off the examination table elicited significant shortness of breath. Her height was 68.5". Her weight was 255 pounds. Her blood pressure was 140/80. Her pulse was 70 and respirations were 18. Her vision was 20/20 for far vision, in the left eye and 20/30 in the right eye, and 20/30 for both.

Near vision was 20/200 in the left and 20/50 in the right. Near vision corrected was 20/30 in both, and 20/30 in the left and 20/30 in the right. Her HEENT was normal. Fundoscopy was normal. Pupils were equal and reactive to light and accommodation. The neck was supple. No thyromegaly. In the chest, S1 and S2 were normal. No murmurs noted. She had bilateral inspiratory and expiratory wheezes. In abdomen was flat, soft and non-tender. No masses or organomegaly. She had some difficulty with ambulation as far as pain was concerned. Neurologically, system normal. She had difficulty bending and squatting. Her pulmonary function test indicated she had FVC of 64% of predicted value; FEV1 of 64% predicted value; FEV3 of 66% of predicted. Post-test, FVC was 2.57; FEV1 was 1.72, which showed an improvement. She does have restrictive lung disease as well as evidence of COPD. She was assessed with restrictive lung disease with significant shortness of breath, COPD, hypertension, and diabetes. (Pages 27, 28)

A psychiatric evaluation, dated December 3, 2009, indicates that claimant was living alone. Her thoughts were spontaneous, logical and organized. Her contact with reality was good. Her insight was fair. She shared her self-esteem as poor lately. Her motivation is low. Her motor activity was normal. She did not appear to exaggerate or minimize her symptoms. She was 5' 7" tall and weighed 250 pounds. She came to the evaluation alone and drove herself. Her posture and gait were normal. Her clothing was clean and casual. She wore slacks and a fleece jacket. Her hair was neat and she stated that it was a wig. She wore glasses. Her hygiene was good. She was cooperative and open. She cried briefly when talking about her symptoms. There was no evidence of hallucinations, delusions, persecutions, nor other unusual thought content noted during the interview. The claimant endorsed occasional suicidal ideation as well as somatic complaints of sleep disturbance. Her speech was normal. The claimant stated that she felt kind of sad. Her affect was appropriate. The claimant was oriented to time, person and place. She

repeated 4 numbers forward and 3 numbers backward, for immediate memory. She was able to recall 2 out of 3 items three minutes later, in recent memory. She named the past few presidents as Carter and Bush, and her birth date is March 27, 1963. She named five large cities as Chicago, New York, Saginaw, Detroit, Indianapolis, Dallas and Detroit. Famous people were Ophra Winfrey and Tiger Woods. Current events were the president sending troops to Iraq and the Tiger Woods incident. For calculations: 5 times 5 equals 25, 7 times 8 equals 48, 12 minus 7 equals 4, 8 plus 9 equals 17. Serials of 3's equaled: 31, 27, 25, 23, 21, 18 and 16. The claimant was asked to interpret proverbs: She said the grass was always greener on the other side means, it's always greener on the other person's side. Don't cry over spilled milk, means there's nothing you could do about your situation if something happens. Similarities between a bush and a tree, they've both got leaves, sticks and leaves, and the difference between a tree and a bush was, one is tall and one is short. When asked what she would do if she found a stamped, addressed envelope, she said she would take it to the post office. When she was asked what she would do if she discovered a fire in a theatre, she would alarm someone that there was a fire and tell everyone to get out. She was diagnosed with major depressive disorder, anxiety disorder and a GAF of 45. Her prognosis was guarded, she would be able to manage her own benefit funds. (Pages 31-33)

This Administrative Law Judge did consider all 273 pages of medical reports 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 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. It should be noted that claimant did not state that she had any mental impairments at the hearing. However, Administrative Law Judge will address the complaints since there are medical reports which support a diagnosis of 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance 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.

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

Adm
Departm

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.

LYL/cv

cc:

