

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: 2010-26352

Issue No: 2009

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, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing [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 August 14, 2009, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits for the months of May, June and July 2009, alleging disability.
- (2) On November 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On December 1, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On February 24, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 29, 2010, the State Hearing Review Team again denied claimant's application stating: claimant is capable of performing other work in the form of light work, per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.21.
- (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 28, 2010.
- (8) On July 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) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.21 and commented that the newly submitted evidence does not significantly or materially alter the previous recommended decision.
- (9) Claimant is a 29-year-old woman whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 195 pounds. Claimant has a Bachelor of Arts degree is [REDACTED]. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked May 27, 2009, as a home health care aide where she had worked for approximately 10 years. Claimant was in graduate school from April 8, 2008 through February 2010, when she dropped out and she had been living off of her student loans and credit cards.
- (11) Claimant alleges as disabling impairments: depression, anxiety, arthritis, back pain, endometriosis and the removal of her fallopian tube and ovary in 2000, headaches and migraines since 1994, pain and numbness in her legs and feet, stomach problems, dizziness, jitteriness, and fatigue, personality disorder and incontinence in her bowel and bladder, as well as back surgery.

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 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that she does have driver's license and drives 2 times per week to the grocery store. Claimant testified that she is married and lives with her husband in a house and her husband works to support her. Claimant does cook two times per week and cooks things like meat and vegetables and she does grocery shop one time per week and her husband helps her with the lifting. Claimant testified that she cleans her home by washing the countertops and the dishes and she usually watches TV and watches the news. Claimant testified that she can stand for 30 minutes at a time, sit for 30 minutes at a time and walk one block maybe. Claimant testified that she cannot squat and that she can bend at the waist somewhat and she had surgery on her knees in 2000. Claimant testified that she is able to shower and dress herself and tie her shoes if she is sitting down but not touch her toes. Claimant stated that her level of pain on a scale from 1-10 is a 9 without medication and with medication is a 5. Claimant testified that she is right handed and her hands and arms are fine and her legs and feet are weak from her back surgery. Claimant testified that the heaviest weight that she can carry is a gallon of milk and she does not smoke, drink alcohol or do drugs. Claimant testified

that she is unable to engage in sexual relations and she had surgery May 28, 2009, and was in ER for 3 hours on [REDACTED]

A September 16, 2009, medical examination report indicates that a physical examination revealed a well-developed, well-nourished lady in no acute distress her height is 68", weight is 195 pounds. Pulse is 108, right blood pressure is 134/71, and respiratory rate is 18 and non-labored (p. 26). Her H EENT: perrla, EOM intact. TM's are pearly gray. Nares, pharynx unremarkable. Discs not evaluated. The neck was supple without adenopathy, thyromegaly or bruits. The skin was unremarkable. The chest was clear with no rales, wheeze, or rhonchi. The heart had regular rate and rhythm. The abdomen was soft. There was diffused tenderness without masses, organomegaly or rebound. Negative CVA tenderness. Distal extremities: had good pulses. There was no pedal edema. The claimant states that cannot heel/toe tandem. In the musculoskeletal area the claimant had significant decreased range of motion of the back, neck, shoulders, elbows, wrists, hands, hips, and knees. Ankles and feet were within normal limits although she advises that heel/toe tandem is impossible. She experiences supple weakness in the right leg versus the left, although she cannot predictably demonstrate this today. She definitely has chronic paralumbar tenderness and decreased flexion. Neurological: cranial 1-12 were grossly tested intact. The claimant has decreased sensation on lower extremities as described. She does not have a foot drop. Negative cerebellar abnormality. DTRS are 1+ and 2+ and symmetrical. Gait is slow. It does not appear necessary that she uses an assistive ambulatory device. The assessment is chronic low back pain and lumbar degenerative disc disease. History of cauda equine syndrome in May 28, 2009, with persistent numbness in thighs and the feet. The claimant advises that she has difficulty voiding both urinating and stooling (p. 27).

A psychiatric/psychological examination report indicates that claimant has an axis GAF for 48 and she was diagnosed with generalized anxiety disorder, eating disorder NOS, obsessive compulsive personality disorder, relationship problems, endometriosis, kidney stones, and cauda equine syndrome. The report is from June 1, 2010 (exhibit A1-A2).

A mental residual functional capacity assessment in the record indicates that claimant is markedly limited in the area of the ability to set realistic goals or make plans independently of others and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rests. Claimant was moderately limited in the ability to maintain attention and concentration for extended period, the ability to work with or in proximity to others without being distracted and the ability to make simple work related decisions, the ability to interact appropriately with the general public, the ability to accept instruction and respond appropriately to criticism from supervisors, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, and the ability to respond appropriately to change in the work setting. She was not significantly limited in any other areas (pp. A3-A4).

A medical examination report dated January 6, 2010, indicates that claimant was normal in all areas of examination except she had low back pain in the musculoskeletal area and she had depression in the mental area. The clinical impression is that she was stable and she could occasionally lift 10 pounds or less but never lift 20 pounds or more. She could stand or walk less than 2 hours in an 8 hour work day, but she could sit less than 6 hours in an 8 hour work day. She could use her upper extremities for simple grasping, reaching, and fine manipulating but not pushing or pulling and she could not operate either foot nor leg controls. Claimant had some limitation in her sustained concentration (p. A6).

An April 12, 2010, consultation diagnosed claimant with generalized anxiety disorder, obsessive compulsive disorder, and an axis GAF of 48 (p. A15).

This Administrative Law Judge did consider all of the evidence contained in the file, including the 289 pages of medical reports as well as the new medical reports A1-A16 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, panic attacks, crying spells, fear of falling, and lack of control over her environment.

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

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: August 3, 2010

Date Mailed: August 3, 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/alc

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