

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: 2010-27689

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 8, 2010

Bay 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 June 8, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On January 15, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On February 9, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.
- (3) On March 3, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On March 10, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 1, 2010, the State Hearing Review Team again denied claimant's application stating: the evidence supports that the claimant would retain the ability to perform simple and repetitive tasks. Physically the claimant will retain the ability to perform one handed light exertional tasks. While the 3 separate opinions are not fully supported by the medical evidence there is reason to believe that they are partially credible. A functional capacity evaluation was requested but never done. 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 one handed light exertional work at a simple and repetitive nature. Therefore, based on the claimant's vocation profile of 39 years old, at least a high school education and a history of medium semi-skilled work, Medicaid-P is denied using Vocational Rule 202.20 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 impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02, 1.03, 11.07, 12.04, and 12.06 were considered in this determination.
- (6) The hearing was held on June 8, 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 July 6, 2010.
- (8) On July 8, 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 202.21.
- (9) Claimant is a 39-year-old woman whose birth date is [REDACTED]. Claimant is 5'5" tall and weighs 200 pounds. Claimant recently lost 45 pounds. Claimant is a high school graduate and has half a year of college. Claimant was in special education for reading and math and she is able to read and write and does have basic math skills.
- (10) Claimant last worked as a Certified Nurses Assistant which she did for 17 years before she got injured.
- (11) Claimant alleges as disabling impairments: bells palsy, jaw spasms, left shoulder pain, anxiety, depression, panic attacks, rotator cuff injury, plantar fasciitis, and heel spurs.

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 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 has not worked since 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a medical examination report dated June 15, 2009, indicates that claimant was 5'5" tall and weighed 222 pounds. Her blood pressure was 130/82 and she was right hand dominant. She was normal in all areas of examination except the musculoskeletal where her left shoulder she was able to abduct 30 degrees but could not lift shoulder above 30 degrees (p. 13). The clinical impression is that she was deteriorating and she was waiting for surgery. She can never lift any weight and she could stand or walk less than 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day. She could do simple grasping, reaching, pushing, and pulling and fine manipulating with her upper extremities (p. 14).

A second medical examination report dated April 16, 2009, indicates that claimant was normal in all areas of examination except in the right shoulder she was able to abduct 40 degrees and she was on medication for depression (p. 15). Clinical impression is that she had a temporary disability and did not give a date for her return to work, but she could stand or walk about 6 hours in an 8 hour day and sit less than 6 hours in an 8 hour day, but could lift no weight. She could use her right upper extremity for simple grasping, reaching, pushing and pulling and fine manipulating and could operate foot and leg controls with both feet and legs. She had no mental limitations (p. 16).

A third medical examination report in the record indicates that claimant had right shoulder pain, which she injured at work in 2006. She was 5'5" and weighed 201 pounds and she was right hand dominant. The clinical impression is that she was deteriorating and she could never lift any weight but could stand less than 2 hours in an 8 day and sit less than 6 hours in an 8 hour work day and she could use neither upper extremity for simple grasping, reaching, pushing and pulling and fine manipulating. She could use her left foot for operating foot and leg controls but had heel spurs in the right. She had no mental limitations. The report was from January 25, 2010, and she needed a chore provider (p. 18).

This Administrative Law Judge did consider in excess of 700 pages of medical reports in making this decision.

A clinical note of June 11, 2009, indicates that claimant demonstrates that she is uncomfortable lifting either arm above 90 degrees of her forward flexion or lateral abduction. Passively there is full range of motion. Horizontal flexion, hyper-abduction, and reverse extension are full but uncomfortable at terminal 30 degrees. The impression is discomfort and pain in both shoulders and her pain was out of proportion to clinical findings (p. 121).

An MRI of the left shoulder dated April 29, 2009, indicates that the biceps and subscapularis tendons are intact. No hypertrophic changes are seen at the inferior margin of the AC joint. No accumulation of contrast is seen in the sub-acromial/sub-deltoid bursa. No healing fracture is seen in the humeral head. Glenoid and the acromioclavicular joint. There is no accumulation of contrast in the sub-acromial/sub-

deltoid versus. The findings suggest superior labral tear extending anteriorly posteriorly. (p. 125). Negative study for the healing fracture. No rotator cuff is seen (p. 126).

An August 6, 2009, MRI of the brain indicates that the MRI of the brain is considered normal. Optimal evaluation of the facial nerve is not possible due to lack of IV gadolinium. Prior study demonstrated enhancing left facial nerve (p. 148). An MRT assessment for JET participation project indicated that claimant was not disabled and work ready with limitations. She could frequently lift 10 pounds occasionally lift 20 pounds stand or walk about 6 hours in an 8 hour work day and sit about 6 hours in an 8 hour work day and her limitations were that she should have no overhead reaching of the right upper extremity and she would be limited to unskilled work and has the ability to understand, remember, and carry out simple instructions, respond appropriately to supervision, co-workers and work pressures in routine work setting and make simple work related judgments and decisions (p. 240).

A chart note of from [REDACTED] center dated July 11, 2007, indicated that claimant was awake, alert and oriented. Her speech was fluent. She had no left or right confusion. Her comprehension and repetition seemed to be intact. Her visual field was full. Her pupils were reactive. Extraocular movements showed poor pursuit movement and she had lower motor neuron type left facial droop. Her motor skills and her tone were normal and she was able to move all four extremities and her gait was pretty good. The impression was left Bell's palsy and right rotator cuff was a concern because she had some pain in her right shoulder, migraines and a tight feeling in the left side of her face (pp. 272-273).

Claimant testified on the record that she was driver's license and drives herself to therapy or to DHS or to the doctors appointments and she usually drives 7-10 miles. Claimant lives alone in a HUD housing apartment and she was receiving Medical Assistance benefits because she was a caretaker relative for her daughter but her daughter turned 18. She does not cook or grocery shop or clean her home. A chore provider does it 20 hours per week and she watches 1 hour per day. Claimant testified on the record that she can stand for 10 minutes, sit for 15-20 minutes, walk a half an hour and can squat but it does hurt. Claimant testified that she can bend at the waist and her knees are fine, her back is fine, and she is able to shower and dress herself but cannot tie her shoes. Claimant testified that she can touch her toes when she is sitting. Her level of pain on a scale from 1-10 without medication is a 10+ and with medication is a 7. Claimant testified that she is right handed and her hands and arms twitch and her legs and feet twitch. She can carry approximately 20 pounds. She does smoke, drink alcohol or do any drugs for at least 5 years.

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 and/or deteriorating. 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 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 he 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 he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he 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 he 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 he 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 he 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

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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