

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: 2010-30737

Issue No: 2009

[REDACTED]

Hearing Date:

May 18, 2010

Marquette 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, telephone hearing was held on May 18, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by L&S Associates.

ISSUE

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

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 December 17, 2009, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On January 6, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment's do not meet duration.
- (3) On January 8, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On April 7, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 26, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested a psychiatric evaluation and internist evaluation.
- (6) The hearing was held on May 18, 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 September 8, 2010.
- (8) On September 10, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The determination of the Medical Review Team cannot be fully supported. The claimant's primary diagnosis is psychiatrically related. The combination of all physical conditions would reasonably limit the claimant to light exertional work. Despite the level of severity associated with depression, bipolar, generalized anxiety disorder, a personality disorder, it is reasonable that the claimant would retain the ability to perform simple, repetitive tasks. 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 remains capable to perform a wide range of light exertional, simple or repetitive work. Therefore, based on the claimant's vocational profile of 36-year-old, at least a high school education and history of medium semi-skilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the Claimant. Listings 1.02, 1.03, 1.04, 3.01, 3.03, 4.04, 5.01, 8.01, 11.14, 12.04, 12.06 and 12.08 and 13.23 were considered in this determination.
- (9) Claimant is a 36-year-old woman whose birth date is [REDACTED] Claimant is 5'4" tall and weighs 220 pounds. Claimant is a high school graduate and has one year of college studying Business. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked November 2008 in her parent's business at a gift shop packaging candles and making products. Claimant owns her own business making jewelry, selling Petokey stones and also worked for her father working with rocks.
- (11) Claimant alleges as disabling impairments: Depression, panic attacks, anxiety, degenerative disc disease, asthma, pneumonia, 6 rotten teeth, bipolar disorder and personality disorder.

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 2008. 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 lives alone in an apartment her mom pays her rent. Claimant is single, with no children under 18 and has no income. Claimant receives Food Assistance Program benefits. Claimant does have a driver's license and her sister takes her where she wants to go or she rides with the daughter to her bus. Claimant does cook in the microwave and cooks things like lean cuisine and ravioli. Claimant does grocery shop one to two times per week and she states she needs help carrying stuff and keeping focused. Claimant testified she feeds her cats and vacuums and does dishes and that she watches television all the time for background noise. Claimant testified that she can

stand for 15 minutes, sit for 15 to 30 minutes at a time and can walk one to two blocks. Claimant testified that she cannot squat because she will fall over and she can sometimes bend at the waist and she does not know if there is anything wrong with her knees and she is able to shower and dress herself. Claimant testified that she can tie her shoes, but it is uncomfortable. She doesn't try to touch her toes. Claimant testified that her level of pain on a scale from 1 to 10, without medication, is a 10 and with medication is a 7 to 9; she is right-handed and there is nothing wrong with her hands and arms. Claimant testified that she has some cracks on her heels and that the heaviest weight she can carry is 5 pounds. Claimant testified that she smokes a pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Her parents buy her cigarettes for her. Claimant testified that she smokes marijuana 2 times per week and that she has never been a regular drinker.

The objective medical evidence in the record shows that a November 16, 2009 lung scan perfusion ventil indicates that perfusion lung images show a mildly heterogeneous distribution without the obvious defects. There are no obvious or concerning mismatched defects. Findings are consistent with previously described bronchial pneumonia. (Page A1 of the new information) An echocardiogram dated November 19, 2009 indicates mild to moderate mitral regurgitation, dilated right atrium, concentric left ventricular hypertrophy and preserved left ventricular systolic performance with ejection fraction estimated at 65 to 70%. (Page A2 of the new information). An MRI dated September 24, 2008 indicates that Claimant has disc protrusion at L5-S1. Prior MRI dated October 7, 2005 with no significant canal or neuroforaminal stenosis. (Page A3 of new information). A Medical Examination Report dated May 24, 2010, indicates that Claimant is normal in all areas of examination and that she is 5; 1/4" and weighed 218 pounds. Her blood pressure was 118/86 and she was dominant right hand. The clinical impression is that she was stable and that she could frequently carry less than 10 pounds and occasionally carry 25 pounds or less and that she could never carry 50 pounds or more. She can use her upper extremities for simple grasping, for reaching, pushing and pulling and fine manipulating and she can operate foot and leg controls with both feet and legs. Claimant had no mental limitations and the doctor indicated that she was generally deconditioned and had shortness of breath on exertion. (Page 4 and A5 of new information). A psychiatric/psychological report dated July 13, 2010 indicates that Claimant was in contact with reality; her self-esteem appears adequate, motor activity on the high side. She is not unpleasant, however she is complaining, worries and is very self oriented. She feels very emotionally dependent. Her motivation is low. She exaggerates symptoms and she is very, very focused on them, tends to be exaggerative in general. Her insight is poor. Her speech is spontaneous, logical and at times she is rambling. It is hard to keep her on track. She goes off on tangents quite easily; usually accompanied by sobbing type of behaviors. (Page 55). When she was asked about hallucinations she stated she wasn't sure but she sees things out of the corner of her eye. She denied hallucinations but she endorses persecutions, saying that she thinks that someone is and that he actually is. When asked about obsessions she says yes, waving my hand, cleaning out my nose with Q-Tips. I go through 20 to 30 a day. She denies thought control by others. Here she denies magical powers. If you ask her about feelings of worthlessness she said yes, for the physical and dental

thing; “nothing I can right now because there’s nothing worth anything cause I can’t do the things I used to do.” Everyone used to think I was pretty much a super hero.” She appeared with very hard sobbing but she did not have actual tears. She often sighed as a part of her sobs. She is dramatic and over reactive. She portrayed herself as helpless and controlled by others. She was oriented to time, person and place. She can recall 6 digits forward and 3 digits reverse in her immediate memory. She recalled 0 out of 3 objects, three minutes later stating “I have no idea.” She put forth very little effort. She named the past presidents as “I don’t know.” When asked who the current president is now, “Obama”. She stated that her birth date is May 16, 1974. She is age 36. She named five large cities as New York, Dallas, Minneapolis, Washington, D.S. and Detroit. She named Brad Pitt as a famous person and she said that she didn’t watch the news when asked about current events. Counting down by 7’s; 93, 86, 79, 72, 65, done slowly but correctly. $5 \times 5 = 25$; $18/6=3$; $12 + 9=21$; and $11 - 3 = 8$. In abstract thinking, the Claimant was asked to interpret “The grass is greener on the other side,” and she said it means no matter what you have, if you look at something else, it’s going to look better and “Don’t cry over spilled milk,” but did not know if there was a hidden meaning in that one or if it’s just self explained. The Claimant stated that a bush and a tree are alike because both have some type of greenery and leaves and they are different because bushes are shorter. If Claimant found a stamped, addressed envelope lying on the ground, the Claimant would stick it in the mailbox if there was a mailbox. She was the first person to discover a fire; she stated she would probably try to do something to help somebody. When asked about future plans she said I don’t have any plans, I don’t know what to do. She was diagnosed with Major Depressive Disorder, Borderline Personality Disorder and her GAF of 50. Her prognosis was guarded but she would be able to manage her own benefit funds (pages B6 and B7). A note from the case worker indicates that Claimant was scheduled for an additional internist examination but she cancelled the appointment due to some psychological issues she was having. The appointment was rescheduled for August 12, 2010. The doctor left his position. The appointment was again rescheduled for September 8, 2010. Claimant called to say she didn’t know if she could make the appointment due to some spider bites she had endured. This Administrative Law Judge determined that there was sufficient evidence contained in the file to make a decision without the internist’s evaluation. This Administrative Law Judge did consider the over 400 pages of medical records contained in the file in making this decision. A Patient Progress Note dated November 25, 2009 indicated that Claimant was a well appearing, 35 year-old female. She was in no apparent distress. She was alert, oriented and responded appropriately to questions. She was breathing much easier than she was on her last visit. A couple of times she coughs but nothing significant. Her vital signs were; blood pressure 122/86; Heart rate 100; respiratory rate within normal limits; temperature 98.3 degrees. Lungs were basically clear. She had a little squeak but not significant crackles or wheezes. Good respiratory effort with good air movement. Her heart was of regular rate and rhythm with no murmurs, rubs, or gallops appreciated. Her extremities, she has no clubbing, cyanosis, or edema of the extremities (page 9).

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: Claimant alleges the following disabling mental impairments: Bipolar disorder, anxiety, depression, 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 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 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 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments. Under the Medical/Vocational Guidelines, a younger individual (age 36), with a high school education and unskilled work history is limited to light work is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continues to smoke cigarettes and marijuana despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

