

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-33907
Issue No: 2009
Case No: [REDACTED]
Hearing Date: July 1, 2010
Lapeer 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 July 1, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

This hearing was originally held by Administrative Law Judge Ivona Rairigh. Ivona Rairigh is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. This hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and 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 December 29, 2009, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On February 4, 2010, the Medical Review Team denied claimant's application stating that claimant could perform past relevant work.

- (3) On February 10, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On April 27, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On May 24, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The evidence supports that the claimant would retain the ability to perform simple and repetitive tasks. Physically, the evidence noted that claimant does have severe limitations which would limit her performing tasks of a nonexertional nature. Despite the treating source opinion, the radiologist reports and reported physical findings do not support the level of disability. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 51 years old, at least a high school education and a history of sedentary, semi-skilled and light skilled employment, Medicaid P is denied using Vocational Rule 202.213 as a guide. Retroactive Medicaid P was considered in this case and is also denied. State Disability Assistance was not applied for by the claimant. Listings 1.02, 1.03 and 1.04, 3.03, 5.01, 11.14, 12.04 and 12.06 were considered in this determination.
- (6) The hearing was held on July 1, 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 12, 2010.
- (8) On July 14, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The new evidence is consistent with the evidence previously presented and affirms the prior State Hearing Review Team determination dated May 24, 2010. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 51 years old, at least a high school education, and a history of sedentary, semi-skilled and light skilled employment, Medicaid P is denied using Vocational Rule 202.13 as a guide. Retroactive Medicaid P was considered in this case and is also denied. State Disability Assistance was not applied by the claimant. Listings 1.02, 1.03, 1.04, 3.03, 5.01, 11.14, 12.04 and 12.06 were considered in this determination.

- (9) On the date of hearing, claimant was a 51-year-old woman whose birth date is November 1, 1958. Claimant is 5'7-1/2" tall and weighs 195 pounds. Claimant is a high school graduate and was a bartender and attended a massage therapist college. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked in May 2009 as a bartender and as a part-time massage therapist when she was involved in a motor vehicle accident.
- (11) Claimant alleges as disabling impairments: Short-term memory problems, a neck injury, arthritis, back, muscle, stomach, bone and hand pain, asthma, shortness of breath and mental issues.

CONCLUSIONS OF LAW

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

The 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).

A mental residual functional capacity assessment in the record in July 1, 2010, indicates that claimant is markedly limited in the ability to remember locations and work-like procedures; the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for standard periods; the ability to perform activity within a schedule, maintain regular attendance and be punctual with customary tolerances; the ability to work in coordination with or proximity to others without being distracted by them; the ability to complete a normal workday and work week without interruptions and psychologically-based symptoms and to perform at a consistent pace and level and unreasonable number of rest periods; the ability to ask simple questions or request assistance; the ability to accept instructions and respond appropriately to criticism to supervisors; the ability to respond appropriately to change in a work setting; and the ability to set realistic goals or make plans independently of others. Claimant is moderately limited in most other areas. (Pages A2 and 3.)

On February 2, 2010, family practice report indicates that claimant has long-standing history of chronic neck and low back problems secondary to degenerative disc disease going back to before, involved in a motor vehicle accident on May 23, 2009. A May 26, 2009, the claimant presented with severe neck and low back pain. Head and chest/rib pain, nausea, sacral tenderness, pain and numbness in the right and upper and lower extremities. Physical examination revealed marked muscular spasm and a cervical, lumbar and sacral spine. Significant palpatory tenderness was noted in the anterior right ribs and sacrum. Marked restriction and motion was present in the neck to the lower spine. Straight leg is positive to the left. X-rays of a cervical and lumbosacral spine pain and revealed findings of degenerative disc disease in both anatomical areas. She was diagnosed with multiple traumatic contusions, traumatic myositis of the cervical and lumbar spine, possible closed-head injury and traumatic aggravation of existing disease. (Page A9.)

An October 9, 2009 admission indicates that claimant was admitted earlier with chronic obstructive pulmonary disease due to tobacco abuse, gastroesophageal reflux disease, chronic pain syndrome and degenerative disc disease, depression and anxiety, nonsuicidal. (Page A28.) Her blood pressure was 107/68, pulse was 113 telemetry showed sinus tachycardia, pulse telemetry 94 percent or room area, respiration is 24 minutes, temperate 36.4 centigrade. The patient since then has remained stable with some telemetry showing sinus rhythm and electrocardiogram showing also sinus

rhythm. Blood pressure 104/74 with mild orthostasis. The patient is awake, alert and oriented x3 and in no apparent distress. Head, eyes, ears, nose and throat: normal cephalic. Pupils equal, round, reactive to light and accommodation. Extraocular movements are intact. The heart had regular rate and rhythm. No gallops, murmurs or rubs. The neck was supple. No jugular venous distention. No cardiomegaly. Lungs are clear to auscultation and percussion was hypoventilated. The abdomen was soft and tender. No organomegaly or masses. The upper and lower extremities showed no clubbing, cyanosis, or edema. (Pages A29.) She presents with palpitations, with anxiety disorder by history, rule out paroxymal atrial tachycardia due to chronic obstructive pulmonary disease (COPD), stable. Resolving pneumonia. Tobacco addiction. Mild orthostasis, asymptomatic. (Page A30). A psychiatric report dated December 4, 2009 indicates that claimant reported being 5'7" tall and weighing 190 pounds. She did not report any significant weight fluctuations. She was casually dressed. Her hygiene and grooming appeared to be appropriate. She does not require assistance in scheduling appointments. With directions, she is able to find locations independently. She is able to drive a car and had a license. She was able to pay bills and count money. Her speech was unimpaired. Claimant's stream of mental activity was spontaneous and organized. There was no significant evidence of hallucinations, delusions, persecutions, obsessions, thus controlled by others or unusual powers. She reported sleeping excessively. She said her sleep is not restful. She denies suicidal or homicidal ideation. She has never attempted suicide (Exhibit B2). Her affect is appropriate to mood. She reported generally feeling anxious and depressed. Her mood during the exam appeared to be consistent with the report. She did not laugh or smile during the exam. She was oriented to time, place, and person. She can immediately remember at least five numbers forward and four backward. She can recall three of three objects three minutes later. She stated the past and recent [REDACTED] and [REDACTED]. She stated her birth date correctly as November 1, 1958. She stated the current [REDACTED]. The three large cities are [REDACTED], and [REDACTED]. Two current famous people are [REDACTED] and [REDACTED]. She stated that she does not watch the news but some guy took an [REDACTED] back and threatened to shoot them because they wouldn't take it back. Her calculations she stated was 3 plus 4 equals 7, 8 minus 3 equals 5, two times four equals 8 and 10 divided by 2 equals 5. She subtracted 7s from 100 as 93, 85, and 72. She subtracted threes from 30, 27, 24, 21 and 18. In abstract thinking, she stated that the proverb the grass always looks greener on the other side of the fence means they think that something is better than what they have and don't count your chickens before they hatch means don't count on things unless you have them. She stated that a bush and a tree are alike and that they both have leaves and they are different in that a tree has a bigger trunk. She stated that if she saw there was a fire in the theater, she would yell fire and run. If she found a stamped addressed envelope, she would mail it and she does not know what her future plans are. She was diagnosed with anxiety disorder, depressive disorder and her prognosis was guarded. Her current GAF Axis is 55 and she would be able to manage her own funds. (Pages B3 and B4.)

A Medical Examination Report in the file dated August 14, 2009 indicates that claimant's clinical impression is that she is deteriorating and that she could occasionally carry ten

pounds or less and never carry 20 pounds or more. She could stand and walk less than two hours in an eight-hour workday. She could do simple grasping, reaching, pushing, and pulling and fine manipulating with both upper extremities but not operate foot and leg controls with either feet or legs. (Page 17 of the original medical reports.) A second Medical Examination Report dated August 24, 2009 with an orthopedic doctor indicates that claimant was 5'7" tall and weighed 191 pounds. She can work with a stand, sit and walk option. The clinical impression is that she was stable and she could occasionally carry less than ten pounds but never carry ten pounds or more. She had degenerative cervical and lumbar disc herniation and stenosis and her current pain medication are muscle relaxers. (Pages 21 and 22.)

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 subjective and objective medical evidence on the record indicates

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression and anxiety.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is 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, 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 [REDACTED], published by the [REDACTED]... 20 CFR 416.967.

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

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or

standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a person who is approaching advanced age with at least a high school education and a history of sedentary work, semi- and light-skilled employment who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.13.

It should be noted that claimant continues to smoke 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).

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.

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 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 Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 20, 2011

Date Mailed: July 21, 2011

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/tg

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