

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-33917
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 16, 2010
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on June 16, 2010. Claimant personally appeared and testified.

ISSUE

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

FINDINGS OF FACT

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

- (1) On March 24, 2010, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits disability.
- (2) On April 22, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On April 29, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On May 4, 2010, claimant 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: the claimant is alleging disability secondary

to back pain, ovarian cyst, and shortness of breath, depression and anxiety. The claimant is noted for having an ovarian cyst, which is causing some abdominal pain. The claimant otherwise has no physical limitations other than when she complains of; her recent physical examination, p. 10 notes normal findings, giving light limitations secondary to claimant's alleged spasms. Page 17 is a psychiatric evaluation performed for the Social Security Administration (SSA). While the claimant is noted for a history of alcohol abuse and sustained in remission as well as mixed depression and anxiety, it is further noted that claimant would have no psychiatric limitations to perform in gainful activities. The evidence supports that there are no severely impairing conditions. There are treating source statements, (pp 50, 52, 54). The latter of two opinions agree that there are no limitations while the former opinion is not supported by the preponderance of the evidence. The current examination gives the claimant light limitations solely based upon alleged spasms. The claimant is noted to have no difficulty at any time during the examination and the claimant was noted to have walked one and a half miles to attend the psychiatric examination. (p. 17). The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, Medicaid-P is denied per 20 CFR 416.921(a). Retroactive Medicaid-P was considered in this case and is also denied. State Disability was not applied for by the claimant. Listings 1.02, 1.03, 1.04, 3.01, 5.01, 6.01, 11.14, 12.04, 12.06, 12.09 were considered in this determination.

- (6) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 145 pounds. Claimant attended the 10 grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked as a school janitor. Claimant has also worked at the grocery store and a gas station.
- (8) Claimant alleges as disabling impairments: Back pain, depression, anxiety, ovarian cyst, shortness of breath, stents in her kidneys, heart palpitations, and hip pain for the last 20 years.

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 2000. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a medical examination report in the file dated March 3, 2010, indicates that claimant has a palpable mass and surgery is scheduled for March 17, 2010 on her abdomen, but she was normal in all areas of examination and she 66" tall and weighed 167 pounds and her blood pressure was 134/80. Claimant's condition was stable and she would have a temporary disability 6-8 weeks post operatively and the surgery was done on March 17, 2010. Claimant could occasionally carry 20 pounds and never carry 25 pounds or more and did not require an assistive device for ambulation. Claimant could use both of her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating, and could operate both foot and leg controls with both feet and legs and had no mental limitations except she did have depression and anxiety (pp. 53-54).

Another medical examination report dated March 31, 2010, indicates that claimant's clinical impression stable (p. 51).

Another medical examination report dated March 31, 2010, indicates that claimant had depression and an ejection fraction of 25% with congestive heart failure and tender

lumbar spine and depression and she was disabled to work and could use her upper extremities for simple grasping and fine manipulation but not reaching or pushing and pulling and she could not operate foot and leg controls and could only lift less than 10 pounds. She did have some limitation with comprehension, sustained concentration and social interaction (p. 48, 49).

A March 17, 2010, CT of the abdomen and pelvis without contrast indicates minor to severe bilateral hydronephrosis, greater on the left. There is perinephric fluid collection adjacent to the lower pole left kidney. This is thought to represent urine secondary to compromise left ureter likely iatrogenic. No evidence of renal or ureteral calculi. Fluid is extending down the left pericolic gutter and to the pelvis with moderate amount of pelvic fluid. The uterus and ovaries are grossly unremarkable. Scatter foci of free intraperitoneal air seen in the inferior lower pelvis likely iatrogenic from patient's recent laparotomy. There is mild sigmoid diverticulosis without diverticulitis (p. 46).

A discharge summary of March 2, 2010, indicates that claimant's abdominal mass is not in acute urgent etiology or mass that needs to be operated on acutely. They recommend her workup for a mammogram, pap smear and also some more lab work to rule out ovarian cancer even though likelihood and suspicion is quite low (p. 29). On a Physical examination dated August 20, 2009, indicates that claimant was 65.5" tall and weighed 145 pounds, her pulse was 84 per minute, respiratory rate 20 per minute, blood pressure 126/90. Vision with eyeglasses was 20/40 bilaterally. The claimant did not wear glasses. HEENT: the pupils were equal and reactive; there is no jaundice or pallor. There is no throat redness, neck is soft and subtle. There is no thyromegaly or lymphadenopathy. Lungs were clear with good air entry bilaterally. Percussion was normal. Anterior and posterior diameter of the chest wall is normal. There is no cyanosis or clubbing noted. No accessory muscle of respiration were used. In the cardiovascular area, first and second heart sound rhythm was regular. Peripheral pulses are palpable. Legs do not show pitting edema. The abdomen was soft and nontender. There is no rebound, guarding or hepatosplenomegaly. Bowel sounds were positive. In a neurological examination, the claimant was alert, awake and oriented x3. Speech was normal. Cranial nerves 3-12 appeared intact. Reflexes were 5/5 in all 4 limbs. Gait is normal. She was able to walk on heels and toes, squat down and get up. Hand grip is good. She could tie shoe laces in button clothing. She can get up onto the examination table independently. In the musculoskeletal system, hands do not show any synovitis. Wrists, elbow and shoulders do not show any swelling, redness or tenderness. Range of motion is normal. Cervical spine does not show any tenderness or spasms. Range of motion is normal. Lumbosacral spine does not show significant tenderness or spasms with normal range of motion. She can bend down and touch her toes. Hips, knees and ankles do not show any redness, swelling or tenderness. Range of motion is normal (p. 9).

The impression is that claimant can do light activity with an option for a break in-between when she has a back spasm. She can engage in moderate stressful limitations and her assessment is that she had low back pain, anxiety and depression and insomnia (p. 8).

A psychological evaluation of August 18, 2009, indicates that she was 5'6" and weighed 145 pounds, she was attending AA currently once or twice per week. She has not used other illegal drugs. Her posture was normal her manners were polite. Her speed was normal, her gait was normal, her attentiveness was normal, her clothing was neat and casual and her hygiene was clean. Her personal care was provided by herself. Her sleep was interrupted by pain at which point she would rise to sit until the pain went away. She had no problems with her appetite. She enjoyed her mother's company. She was bored at times and maybe a little lonely. Her contact with reality was adequate and normal. Her self-esteem was variable. Her motor activity was normal. She was relaxed and had no unusual behavior observed. She was pleasant. Her degree of autonomy was adequate. She had no tendency to exaggerate or minimize symptoms. She had adequate motivation to daily tasks unless in pain. Her impulse control was adequate, she had no separation anxiety and her tolerance for change was adequate. Her stream of mental activity was spontaneous. Her quality of verbal expression was adequate with no speech impediment. She had no blocked thoughts. She had no slowed speech, no distractibility, she was logical and had no pressure of speech and her organization of thought was adequate. In her mental trend and content of thought she denied hallucinations, persecutions, and thoughts controlled feelings of worthlessness, suicidal ideas, delusions, obsessions, unusual powers, somatic complaints or suicide attempts. She stated that she was depressed which was evident but she was not angered. She was friendly. She was oriented to time person and place and her immediate memory she could remember 5 digits forward and 3 digits backward. In her recent memory she could recall 3 objects after 3 minutes. They were given as table chalk and bottle when she gave them back table bottle chalk. The past presidents in the past 50 years she named, she named her birth date, the school she attended, she named 5 large cities, she named current people, she named current events, the capital of Michigan, the number of states and she could not locate Egypt. She did her serial 7's but she was attentive but could not do the sustained math. She added $4+5=9$, $10-7=3$, $31-14=25$, $6*7=$ she didn't understand, $12+14=37$, and $44-12=39$. She had problems doing math in her head, while she stated that the grass is always greener on the other side of the fence means, they think it's going to be better over there. Don't cry over spilled milk, meant it's too late now, deal with and don't judge a book by its cover meant don't judge before you understand. In similarities an apple and an orange are both fruit, cat and mouse are animals, winter and summer are seasons, a bush and a tree are plants, and ice and a stream are water. Judgment: she stated if a person finds an envelope on the street they should drop it in the mailbox. If a person is the first one to see a fire in a theatre they should get out of there and get people out. People should pay taxes to pay the firemen, and policemen, and city workers (pp. 12-13).

In her summary of mental status, she was articulate in her speech, her range of verbal self-expression and comprehension appeared to be the system of estimated intelligence. Her attention and concentration were focused and sustained. She had a pleasant and anxious affect and mood. Her abstract attitude was preserved and her estimated general intelligence was grossly normal. Her reading standard score was 76 which is an equivalent of 7th and her arithmetic was a 65 which was equivalent of 4th grade. She was diagnosed with mixed anxiety and depression. In the past alcoholism

is sustained in committed remission. She was able to make change and pay a bill a mail bills. Her motivation and judgment were considered to be adequate and she had the ability to take care of her own or manage her own benefit funds. Her pain was her only limitation to relationships to others (p. 12).

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 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, 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 41), with a less than high school 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 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: July 28, 2010

Date Mailed: July 29, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/alc

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