

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

IN THE MATTER OF:



Reg. No: 2010-34098
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 28, 2010
Wayne County DHS (17)

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 September 28, 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 State Disability Assistance (SDA)?

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 10, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 16, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior relevant work.
- (3) On May 5, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On May 5, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 20, 2010, the State Hearing Review Team again denied claimant's application and requested surgery records from July and August 2010, and all updated medical records.

- (6) The hearing was held on September 28, 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 October 25, 2010.
- (8) On November 10, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: the objective medical evidence presented does not establish a disability of listing or equivalence level. The claimant retains the residual functional capacity to perform at least light unskilled work per the provision of 20 CFR 416.967(b) and 20 CFR 416.967(a), and using Vocational Rule 202.20 as a guide. This may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing work, a denial to other work based on a Vocational Rule will be used.
- (9) On November 15, 2010, [REDACTED] sent in more new medical information. The information arrived after record close date.
- (10) The new information was sent to the State Hearing Review Team on December 1, 2010.
- (11) On December 9, 2010, the SHRT again denied claimant's application stating that the majority of the new information was duplicate information and was reviewed in 11/10 by SHRT. The claimant's physical examination in 3/10 was basically unremarkable. In 7/10 she underwent cervical decompression surgery. She has a history of cocaine dependence but reported current remission. She was admitted in 5/10 due to suicidal thoughts but had not been taking her medications. Her condition improved with treatment. There was no evidence of a thought disorder. 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 simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (younger individual, high school education and history of unskilled and 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 is denied per 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

- (12) Claimant is a 37-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 153 pounds. Claimant has a GED and attended 2 years of college and studied accounting. Claimant testified that she is able to read and write but it's shaky and does not have basic math skills.
- (13) Claimant last worked approximately 2006 in customer service. Claimant has also worked in a factory and for [REDACTED] Industries doing light industrial work.
- (14) Claimant alleges as disabling impairments: depression, anxiety, bi-polar disorder, diabetes mellitus, hypertension, back problems, two back surgeries, and a neck brace.

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 at least 2006. 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 with a roommate and gateway pays her rent. Claimant testified that her mother and father support her and she receives State Disability Assistance benefits in the amount of \$█ per month. Claimant is single with no children and she also receives Food Assistance Program benefits. Claimant does not have a driver's license and usually gets rides from people and her mother and roommate cook for her. Claimant testified that she does not grocery shop or clean her home or do any outside work and she watches TV 5 hours per day. Claimant testified that she can stand for 5 minutes, sit for 20 minutes, and walk from the front desk to the office. Claimant testified that she cannot squat but she is able to bend at the waist. Claimant testified that she has pain in her knees and she cannot shower and dress herself, tie her shoes, or touch her toes. Claimant testified that her level of pain on a scale from 1-10 is a 10 without medication and with medication is a 6. Claimant testified that she is left handed and her hands and arms are numb and she has no dexterity and her legs and feet are numb and ache. Claimant testified that she can carry a small purse which is approximately a pound and she does not smoke or drink and stopped using crack cocaine approximately 1 year ago. Claimant testified that in a typical day she lies down all day. Claimant testified that she had back surgery and cervical fusion on July 21, 2010, and on August 30, 2010, she had back surgery.

An April 17, 2010, hospital admission indicates on a physical examination claimant's temperature was 97.9, pulse 94, respiration 16, and her blood pressure was 130/62. She was a 36 year old female with androgenic features. She was in no acute distress. She was non-toxic. She was lying in a left lateral recumbent position for comfort. Her head was atraumatic and normocephalic. Mucous membranes were moist. Her neck was supple. Trachea was midline. There was no JVD. The heart had regular rate and rhythm. Lungs were clear to auscultation bilaterally. Her abdomen was muscular, soft and non-distended. There was tenderness to palpation in the right lower quadrant over McBurney point. There is no rebound tenderness. There is no involuntary or voluntary guarding. There is no rigidity. Rovsing sign is negative. There is tenderness to palpation all throughout the right flank. There is a protruding umbilicus. There is no umbilical hernia. This is just umbilical cord remnant tissue. There are no palpable anterior abdominal wall hernias. In the extremities, there was no clubbing, cyanosis, or

edema. Pelvic exam done per the emergency department staff. No cervical motion tenderness. There was positive right adnexal tenderness. No discharge noted. The assessment was acute pancreatitis, bipolar disorder, anxiety, depression, and questionable chromosome abnormality due to body habit (p. 1).

A CT of the cervical spine was taken on April 20, 2010 and there was no evidence of acute fracture or subluxation identified. There was mild straightening of the cervical lordosis. There is mild anterior and posterior spondylosis at the level of the C4-C5, C5-C6, C6-C7 and C7-T1 intervertebral disc spaces. This is associated with mild disc space narrowing at these levels as well (p. 2). On June 30, 2010, claimant was admitted and the impression was myalgia with elevated CK, suspect myositis due to lipid but rule out underlying CNS disorder with abnormal reflex examination. A peripheral neuropathy, small fiber likely secondary to diabetes mellitus, rule out other metabolic causes, and a history of polycystic ovary syndrome, diabetes mellitus, bipolar disorder, anxiety and depression. The claimant was awake and oriented. She was able to state her own name, what hospital she was in, the gait and the president was Obama. She was cooperative. Her affect was flat. Her speech was fluent without dysarthria. She had good insight into the hospitalization. Her cranial nerves II, the visual fields were intact. Pupils were equal, round and reactive to light. III, IV, and VI extraocular movements were intact. Cranial nerve V, patient's sensation was intact in the VI and the V-1 through V-3 distribution, masseter is intact. Cranial nerves VII, muscles and facial expression were intact. There was no facial droop. Hearing was intact to normal conversation. Palate elevates symmetrically. Uvula was midline. Sternocleidomastoid and trapezius are intact and graded 5/5 bilaterally. Tongue protrudes midline. There is no atrophy or deviation. Sensation is intact to pin, temperature and vibration and light touch. There is distal and proximal gradient to pin in the bilateral lower extremities. There is no pronator drift. She has excessive muscle bulk for her sex, which is attributed to her PCOS. Strength is graded at 5/5 in the distal and proximal muscles on the bilateral upper and lower extremities. There is normal tone. No spasticity or rigidity. There are no fasciculations or clonus. Finger to nose, finger to nose, and heel to shin are intact bilaterally. There is no ataxia. Rapid alternating movements are intact. There is no dysdiadochokinesis (pp. 42C, 42D).

This Administrative Law Judge did consider all approximately 300 pages of medical documents contained in the file in making this decision.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated

with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: bi-polar disorder, anxiety and depression.

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 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 37), with a more than high school

education and an unskilled work history who 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 drug 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.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 16, 2010

Date Mailed: December 17, 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.

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