

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: 2010-34102
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 29, 2010
Berrien 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 29, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

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

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 April 24, 2009, claimant filed an application for Medical Assistance and Retroactive Medical alleging disability.
- (2) On January 25, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On January 28, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On April 27, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 25, 2010, the State Hearing Review Team again denied claimant's application stating: that claimant is capable of performing past

work per 20 CFR 416.920(e) and commented that the claimant retains the residual functional capacity to perform at least sedentary work. The claimant's past work was sedentary. The claimant retains the capacity to return to past sedentary work.

- (6) The hearing was held on June 29, 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 June 30, 2010.
- (8) On July 7, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is incapable of performing past work of a customer service representative and stated in its' comments that the newly submitted evidence does not significantly or materially alter the previous recommended decision.
- (9) Claimant is a 37-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 270 pounds. Claimant recently lost 30 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked November 25, 2009, at [REDACTED] as a cashier. Claimant has also worked at [REDACTED] as a manager, as an assistant manager at [REDACTED] and a cashier at [REDACTED] and as a cashier at [REDACTED].
- (11) Claimant alleges as disabling impairments: coronary artery disease, hypothyroidism, diabetes mellitus, hypertension, kidney stones, back and neck pain, leg pain, depression.

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 claimant'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 November 25, 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that she lives with family members wherever she can stay and she is homeless and she is married but her husband is incarcerated. Claimant testified that she has no children under 18 and no income and receives Food Assistance Program benefits. Claimant does have a driver's license and drives herself to doctor's appointments one time per month or her family takes her. Claimant testified that she cooks 3 times per day and makes sandwiches, salads, and simple things. Claimant testified that she grocery shops as needed, usually twice a week with no help and she does clean her bedroom where she stays. Claimant testifies that she watches 1-2 hours of TV per day and she can stand for 1-2 hours, sit for 1-2 hours and can walk around the house. Claimant testified that she uses the Amigo to ride around the store and she cannot squat. Claimant testified that she can bend at the waist and her back has pain. Claimant testified that she can shower and dress herself, tie her shoes but not touch her toes and her knees are fine. Claimant testified that her level of pain on a scale from 1-10 without medication is a 5-6 and with medication is a 0-1. Claimant testified that she is right handed and her hands and arms are fine, but she does have some edema and swelling in the ankles and legs. Claimant testified that the heaviest weight that she can carry is a gallon of milk and she doesn't smoke, drink, or do illicit drugs. Claimant testifies that in a typical day she has breakfast and takes her pills, watches television, naps, has lunch, watches TV, takes a nap, has dinner, watches TV, and visits with her family and then goes to bed.

Claimant had a chest x-ray in October 27, 2009, which indicated her heart size is normal. Her lungs are clear of active disease. There are no mediastinal or plural

abnormalities. The conclusion was negative, chest radiographs (A5). A medical examination report of November 20, 2009, indicates that claimant had coronary artery disease with widely patent stent to the left anterior descending coronary artery. He had uncontrolled diabetes mellitus type II and hypothyroidism. Her blood sugar was quite uncontrolled and her hemoglobin A1C was markedly elevated at 12.7%. She was started on Basal insulin to compliment metformin and she was discharged home (p. A6).

An admission report on October 29, 2009, indicates that claimant's initial blood pressure was 183/44 and she went to a walk-in clinic where she was prescribed Albuterol, MDI and Mucinex. She reported improvement of her symptoms after taking the medications. She had a noted decreased cough and decreased shortness of breath (p. A15). Her blood pressure was 196/89, heart rate 54, respirations 18, oxygen saturation 100% on 2 liters per nasal cannula, temperature 36.1, weight 122 kg. General appearance: claimant was an alert white female who was in no acute distress. She was able to answer questions appropriately and pleasant. Her skin was warm and dry without ecchymosis, hematomas, or abrasions. HEENT: head was normocephalic and atraumatic. Eyes: extraocular movements were intact. Pupils were equal and round. Oral mucosa is moist and pink. The neck was somewhat full secondary to body hobbages. Chest: lungs were clear to auscultation bilaterally without wheezes, rales or rhonchi. Respiratory effort is unlabored and even. No chest wall tenderness to palpation. The heart had regular rate and rhythm S1 and S2 without murmur rub or gallop. Abdomen is obese, soft and non-tender (A. 16). The extremities showed no lower extremity edema. Pulses: radial pulses were 2+ bilaterally. Musculoskeletal: the claimant was able to move all 4 extremities without any gross limitations. In the neurological area, the cranial nerves 2-12 were grossly intact without any focal deficits (p. A17). The assessment was chest pain and hypertension with an abnormal stress test.

A medical examination report dated March 19, 2010, indicates that claimant was 5'6" tall, weighed 275 pounds and her blood pressure was 112/70 and she was right hand dominant. She was normal in all areas of examination except she had some nasal mucosa edema and soft systolic murmur in the cardiovascular area. The clinical impression is that she was improving and had a temporary disability and she could frequently lift less than 10 pounds and occasionally lift 10 pounds. She can stand or walk about 6 hours in an 8 hour work day and sit about 6 hours in an 8 work day. She did not require assistive devices for ambulation and she could use her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and she could operate foot and leg controls with both feet and legs (B1-B2).

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 improving and 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.

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 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 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: August 03, 2010

Date Mailed: August 03, 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.

2010-34102/LYL

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

cc:

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