

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

IN THE MATTER OF:



Reg. No: 201034997
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
June 16, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jana Bachman

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 9, 2009. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and 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 September 17, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On November 17, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 201.21.

- (3) On November 19, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On November 23, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 26, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested additional medical information in the form of a complete physical examination and a psychiatric evaluation.
- (6) The hearing was held on June 16, 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 April 18, 2011.
- (8) On April 25, 2011, the State Hearing Review Team approved claimant for Medical Assistance and retroactive Medical Assistance benefits stating in its' recommendation: the disability determination service approved this claimant for benefits with an onset date of July 2010. At this point it is not clear whether the claimant has been put into payment status or not as the claim is being review by DQB. However, it is anticipated that she will be placed into payment status. Therefore, MA-P/retro MA-P is approved effective July 2010. At medical review of April 2012, please check to see if the claimant is in current payment status or not. If the claimant is in current payment status at the medical review, no further action will be necessary. However, if the claimant is not in current payment status at the medical review, please obtain updated application forms in the form of DHS-49 forms and obtain updated medical records.
- (9) On the date of hearing claimant was 43a-year-old woman whose birth date is [REDACTED]. Claimant is 5'3" tall and weighs 186 pounds. Claimant is a high school graduate and 2 years of basic college. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked February 2008 as a lead teacher in a daycare. Claimant has also worked for a school system and as a cashier.
- (11) Claimant alleges as disabling impairments: sleep apnea, depression, anxiety, and autoimmune disease.

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).

Because of the State Hearing Review Team decision it is not necessary for the Administrative Law Judge to discuss the issue of disability per PAM, Item 600. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits if not previously done.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance program as of July 2010.

However, claimant's application of September 17, 2009, with retroactive months of August, July and June 2009. Therefore, this Administrative Law Judge must proceed through the sequential evaluation process for the June 2009 through June 2010 time period.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant lives alone does have a driver's license and is able to drive. Claimant does cook and stated that she was too tired to grocery shop. Claimant testified that she did no housekeeping duties and that she sleeps most of the time and that her major problem is that she is never awake and is always sleeping. Claimant testified that she can walk 3-4 blocks before she gets tired and can sit for about an hour and a half until her back starts hurting. Claimant testified that she can stand for 5 minutes and the heaviest weight that she can carry is 5 pounds. Claimant was right handed and stated that she didn't smoke, drink alcohol or take any drugs and that she had two surgeries in March 2009 for female problems and nasal problems.

A medical examination report dated [REDACTED] indicates that claimant has chronic fatigue affecting the ability to work and sleep apnea and that the clinical impression is that she was stable. She could occasionally carry 10 pounds or less but never carry 50 pounds or more. She could stand or walk less than 2 hours in an 8 hour work day, she could use both of her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating, but not operating foot or leg controls with either foot or legs.

A [REDACTED] cervical examination report that claimant's oral temperature was 98.4 degrees Fahrenheit. Her pulse rate is 88 beats per minute and her respiratory rate was 16 beats per minute and she was in moderate distress. Her pupils were equal, round and reactive to light. Extraocular movements were intact normal conjunctiva. HEENT was normocephalic, tympanic membranes were clear. Normal hearing. Oral mucosa is moist. No pharyngeal erythema. The neck was supple and non-tender, no lymphadenopathy. No thyromegaly. In the respiratory area, the lungs were clear to auscultation. Respirations are non-labored. Breath sounds are equal, symmetrical chest wall expansion. No chest wall tenderness. Cardiovascular, normal rate, regular rhythm, no murmur, normal peripheral perfusion, no edema. Gastrointestinal soft, non-tender and non-distended. Normal bowel sounds, no organomegaly. No lymphadenopathy in the neck, axilla or groin. In the neurological area, she was alert and oriented, normal sensory and normal motor function, no focal defects. Cranial nerves II-XII are grossly intact. Normal deep tendon reflexes. In the psychiatric area she was cooperative, appropriate mood and affect, normal judgment, non-suicidal, claimant states that the meds make her encephalopathic, slower thinking. It took her a few seconds to

think of the date. Her diagnosis was back pain, chronic fatigue syndrome, depression, obstructive sleep apnea (pp. A1-A2).

This Administrative Law Judge did consider the entire medical packet of the original 205 pages plus the new information submitted by claimant which is 18 pages.

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: sleep apnea, 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 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 43), 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.

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 September 17, 2009, application from June 2009 through June 2010 for Medical Assistance and retroactive Medical Assistance benefits.

Accordingly, the department's decision is PARTIALLY AFFIRMED. However, the State Hearing Review Team did approve claimant for Medical Assistance benefits from July 2010 forward.

Accordingly, the department's decision is PARTIALLY REVERSED. The department is ORDERED to initiate a review of the claimant's application from July 2010 forward if it has not already done so to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing.

Landis

/s/

Y. Lain

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

Date Signed: June 16, 2011

Date Mailed: June 17, 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.

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