

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

IN THE MATTER OF:



Reg. No: 2010-35763
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2010
St. Clair 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 30, 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 November 30, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 28, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On May 5, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On May 17, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 1, 2010, the State Hearing Review Team again denied claimant's application stating: it had insufficient evidence and requested a physical examination and a psychiatric examination.

- (6) The hearing was held on June 30, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on July 20, 2010.
- (8) On June 1, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient information.
- (9) The hearing was held June 30, 2010. At the hearing claimant waived the time limits and requested to provide additional information.
- (10) Additional information was provided and sent to the State Hearing Review Team on July 20, 2010.
- (11) On July 20, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the evidence supports that the claimant would reasonably be limited to performing sedentary tasks and that they would need an assistive device, a cane. The claimant's psychiatric condition would reasonably limit them to simple and repetitive tasks. 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 sedentary exertional work and require the use of an assistive device, a cane; the claimant would retain the ability to perform simple and repetitive tasks. Therefore, based on the claimant's vocational profile of 40 years old, at least a high school education and a history of medium, semi-skilled employment, State Disability is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above state level for 90 days using Vocational Rule 201.27 as a guide. Medicaid-P and retroactive Medicaid-P were applied for on November 30, 2009 as well as State Disability but were not appealed by the claimant; if this was an error on the part of the claimant, the denial pertaining to State Disability would also apply to a Medicaid-P and retroactive Medicaid-P appeal related to the same application date. Listings 1.02, 1.03, 1.04, 7.02, 11.14, 12.04, 12.06, and 12.09 were considered in this determination.
- (12) Claimant is a 48-year-old woman whose birth date is [REDACTED] Claimant is 5'11" tall and weighs 226 pounds. Claimant recently lost 30 pounds. Claimant has an Associates Degree in [REDACTED] Claimant is able to read and write and does have basic math skills.
- (13) Claimant last worked February 2007 as a corrections officer. Claimant has also worked as a bus driver and in outreach for the council on aging.

- (14) Claimant alleges as disabling impairments: bi-polar disorder, no feeling in the right foot, obsessive compulsive disorder, attention deficit hyperactive disorder, degenerative disc disease and blood disorder, as well as 3 fusions in the lower back, chronic anemia and constant worry.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2007. 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 does not receive the Adult Medical Program and Food Assistance Program benefits. She lived off of her 401K until it was exhausted then she sold her things. Claimant lives alone in her parents apartment and she is single with no children. She was receiving State Disability Assistance benefits because she was active with Michigan Rehabilitation services. Claimant testified that she does have a driver's license and her mom usually takes her where she needs to go. Claimant testified that she does cook in the microwave and cooks things like frozen foods. Claimant testified that she grocery shops 1-2 times per month and she uses the Amigo cart. Claimant testified that she does not clean her home and she watches TV but doesn't have much interest in anything. Claimant testified that she can stand for 10 minutes, sit for 10 minutes, walk for 100 feet, but not squat bend at the waist, shower and dress herself, tie her shoes or touch her toes. Claimant testified that she has pain in her knees and her level of pain on a scale from 1-10 without medication is 10 and with medication is a 9-10. Claimant testified that she is right handed and that her hands and arms are fine and in her legs and feet she has right side burning and butt pain. Claimant testified that she can carry 5 pounds and that she usually drinks two times per month and drinks things like mixed vodka but she does not smoke and has never done any illegal drugs. Claimant testified that in a typical day she does nothing but cry a lot and think about her son who is in [REDACTED] or [REDACTED] and talk to her cats and write a lot about how she feels.

A psychological mental status report dated June 21, 2010, indicates that claimant was alert and well oriented during the interview. She was polite and cooperative. She was spontaneous, well organized and generally detailed with her presentation but she had intermittent episodes of derailment. Her emotional reaction was labile and she was tearful at times during the interview. She was able to state her full name and it was Monday June 21, 2010, and she was in a doctor's office. In her immediate memory she could remember 5 digits forward and 3 digits backward. In her recent memory, she was able to register all 3 objects of apple, penny, and table and recall them as apple, pen, and table after 3 minutes. In her past memory, she was able to state her date of birth was [REDACTED]. When asked to name presidents during her lifetime she responded, Clinton, Bush, Bush, Regan, Carter and Obama. For 5 large cities: New York, Detroit, Chicago, Fort Meyers, and Savannah. Current famous people: Tiger Woods and the Kardashians. Current events: the BP thing. In her computations: $4+5=9$, $8+6=14$, $12-5=7$, $3*9=27$, $6*7=42$, and $54/9=6$. Serial 7's: 100, 93, 86, 79, 72, 65, 58, and 51. When asked to interpret the grass is always greener on the other side of the fence, she stated, "things can get better" and when asked to interpret no sense crying over spilled milk, she stated "so what". She stated that a tree and a bush were similar because they are plants and they are different because one is usually taller than

the other. When asked what she would do if found an envelope on the street that was sealed and addressed and had a new stamp, she stated, "put it in the mailbox". When asked what she would do if she was the first person in the movies to see smoke and fire she stated she would "hesitate, because I'm not sure if it's just me." She was diagnosed with major depressive disorder recurrent and severe prognosis was guarded. Her current GAF was 41 and she was able to manage her own benefit funds (pp. A1-A3).

A June 28, 2010, [REDACTED] examination indicates that the claimant was cooperative in answering questions and following commands. She did have some mild lethargy. She was present with her mother. She was dressed in sweat pants and a T-shirt and tennis shoes. Her immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provides a good effort during the examination. Vital signs: blood pressure on the left arm 126/80 and the pulse was 80 and regular. Respiratory rate was 14. Weight was 226.5 pounds and her height was 69" without shoes. Her skin was normal. Eyes and ears: visual acuity in the right eye which equaled 20/25, left eye equaled 20/30 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aid. The neck was supple without masses. The chest breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. Heart: regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen, there was no organomegaly or masses. Bowel sounds were normal. In the vascular area there was no clubbing, cyanosis, or edema detected. The femoral, popliteal, dorso pedis and posterior tibia pulses were intact. Hair growth was present on the lower extremities. The feet were warm with normal color. There were no femoral bruits. In the musculoskeletal area there was no evidence of joint laxity, crepitation or effusion. Grip strength remained intact. She was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had moderate difficulty getting on and off the examination table and was unable to heel and toe walk, squat or hop. There is no paravertebral muscle spasm noted. Straight leg raising is negative. Range of motion studies follow. She did have some slight decrease in dorso lumbar spine but was within normal limits. Neurological: cranial nerves were intact. There is a right sided foot drop. Motor strength is reduced to 1/5 power in the right lower extremity. Tone is normal. There is sensory loss at the right lower extremity. Romberg testing is negative. The claimant walks with a severe right limp without the use of an assistive device. Conclusion is a back injury and the claimant has neuropathy and a myopathy on the right leg as a consequence of her injury there was no atrophy noted. Much of her symptoms do appear to be due to lack of activity. She did appear apathetic and depressed but this does appear to be reactionary. There was an active radicular sympathy today. She did have a right sided foot drop and an AFO device. A walker would be helpful. At this point her long term prognosis appears to be guarded to poor. She does appear complaint and may require further operative intervention of the right back (pp. A4-A7).

This Administrative Law judge did consider the entire medical record which was over 100 pages long.

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, obsessive compulsive disorder, depression, attention deficit hyperactive disorder.

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

2010-35763/LYL

Date Signed: September 7, 2010

Date Mailed: September 8, 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

cc:

A large black rectangular redaction box covers the names of the individuals listed in the 'cc:' field.