

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: 2010-36690
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2010
Ottawa County DHS (70)

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 July 22, 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) 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 25, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On November 30, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On December 3, 2009, the department caseworker sent claimant notice that her application was denied.
- (4) On March 3, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 3, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested a physical examination and a psychiatric evaluation.
- (6) The hearing was held on July 22, 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 19, 2010.
- (8) On November 4, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical evidence supports that the claimant would reasonably retain the ability to perform light exertional tasks of a simple and repetitive nature. The claimant's impairment's 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 light exertional simple and repetitive work. Therefore, based on the claimant's vocational profile of 43 years old, a less than high school education and a history of no gainful employment, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.03, 1.04, 2.02, 2.08, 6.02, 9.08, 11.14, and 12.04, 12.08, and 12.09 were considered in this determination.
- (9) Claimant is a 43-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 110 pounds. Claimant attended the 10 grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked fall 2009 at [REDACTED] as a cashier and working the fryers. Claimant has also worked as a waitress and in a factory.
- (11) Claimant alleges as disabling impairments: Back pain, arthritis, vision problems, anxiety, shoulder problems, diabetes mellitus, only one working kidney, anxiety attacks.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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

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

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

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

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

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

...Medical reports should include –

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

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

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

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

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

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

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

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

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

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

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since fall 2009. 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 her family and friends in a house and she was on welfare until her last child turned 18. Claimant testified that she is single with no children under 18 and she does not have any income. Claimant does receive Food Assistance Program benefits and she does have a driver's license and drives one time per week for a couple of blocks. Claimant's friend brought her to the hearing. Claimant testified that she cooks 2 times per week and cooks things like roman noodles and simple things. Claimant testified that she does grocery shop 1 time per month and she does have some anxiety and needs help reaching above her head. Claimant testified that she cleans her home by doing dishes, and laundry with help. Claimant testified that she reads 1 hour per day as a hobby and she watches TV a half an hour per day. Claimant stated that she can stand for 15 minutes, and sit for 30 minutes at a time. Claimant testified that she walk $\frac{3}{4}$ of a block but cannot squat because it hurts. Claimant testified that she can bend at the waist and her back is numb and her knees are fine. Claimant testified that she cannot shower and dress herself but she can tie her shoes and touch her toes. Claimant testified that her level of pain on a scale from 1-10 equals an 8 and with medication equals a 6. Claimant testified that she is left handed and her hands and

arms are fine and in her legs and feet she has pain and problems with her balance. Claimant testified that the heaviest weight that she can carry is 10 pounds. Claimant testified that she does smoke 2-3 cigarettes per day and her doctor has told her to quit and she has cut back. Claimant testified that she stopped drinking 16 years ago and stopped doing drugs 23 years before the hearing. Claimant testified that on a typical day she gets up and tries to go to the bathroom, then sits around, reads a book or takes naps. Claimant testified that she was hospitalized in the fall of 2009 with a blood infection. She does not go to the doctor because she has no insurance. Claimant also testified that she does not sleep.

On physical examination, the claimant was cooperative throughout the examination. The claimant could hear conversational speech without limitation. There is normal intensity, clarity and sustainability of speech without stutter. The claimant walks with a normal gait. An assistive device is not used. The blood pressure on the right arm equals 110/70 and her left arm was 108/68. Respiration equals 14, weight 114, height 62.5" tall without shoes. The skin, there was a 24 centimeter surgical scar noted over the right mid-abdomen into the right flank. There was also a small surgical scar noted over the left side of the face. Eyes: the visual acuity in the right eye equals 20/20 and the left eye equals 20/20 without corrective lenses. There are scleral icterus or conjunctival pallor. Pupils are equal and reactive to light. The fundi appear normal. The neck is supple with no masses or thyromegaly. No bruits are appreciated over the carotid arteries. There is no jugular venous distention. The chest AP diameter is grossly normal. Breath sounds are of a normal intensity. There are no wheezes, rales, or rhonchi. Accessory muscles are not used. In the heart, no click or murmur could be appreciated. There was no S3 or S4. The heart did not appear to be enlarged. No orthopnea is noted. The abdomen contours normal. There is no organomegaly or masses. There is no evidence of ascites. Bowel sounds are normal. In the vascular area, there is no clubbing or cyanosis detected. The peripheral pulses are intact. The feet are warm in normal color. There are no femoral bruits. There is no peripheral edema. Varicose veins are not seen. There is no stasis dermatitis or ulcerations (p. 23). In the musculoskeletal area, there is no joint instability, enlargement or effusion. Grip strength was also modestly diminished on the right versus the left. Jarrold dynamometer testing reveals compressions at 37 pounds in the right and 58 pounds in the left hand. Dexterity is unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking and no difficulty squatting. Range of motion of the joints was normal in all joints. Motor strength and function were normal. Sensory function remains intact. There is modest shoulder girdle atrophy on the right. No spasm. Reflexes are intact and symmetrically. Romberg testing is negative. The conclusion is a shoulder injury and she had some significant loss of range of motion in the joint and atrophy was also present. There was no evidence of active synovitis. The findings are suggestive of a rotator cuff tear. Grip strength was also modestly diminished on the right versus the left. The claimant's digital dexterity is maintained. The claimant was able to pick up a coin, button clothing and open a door with either hand. At this point in time she had not gone on any orthopedic evaluation or treatment (p. 21).

A psychological examination done August 6, 2010, indicates that claimant was a 43 year old Caucasian female who was 5' 2" tall and weighed 110 pounds. She was ambulatory, left handed and did not wear glasses. She was on time for her appointment having been brought to the testing site. She does have a driver's license. There were no posture or gait problems noted. She was dressed in tennis shoes, shorts, and shirt with blue eyes and brown hair. She had lesions on her face and her appearance was good. She eats one meal per day and sleeps 6 hours out of 24. She bathes every other day and brushes her teeth daily. The claimant was in contact with reality. She was cooperative but rather subdued and anxious. She was often looking behind her at the office door to see if anyone was behind her. There were no motor coordination problems observed. She describes her self-esteem as not very good, complaining that she feels worthless. The claimant was oriented, alert and non-spontaneous. Her speech was clear, coherent, and fluent. Her thought processes were relevant, logical and connected (p.25). She denied delusions or obsessions, but she did have black outs in the past. She complained of hearing a voice calling her name at times. She had paranoid and persecutory thoughts towards people in general. She feels hopeless and worthless and has had passive thoughts of suicide with no intention or plans. She denies any suicide attempts or any homicidal thoughts. She is not somatically preoccupied but she does describe a sleep appetite disturbance. The claimant's affect was depressed, anxious and vigilant. She describes a history of depression and panic attacks as previously indicated. She has a fear of people especially crowds of people. When she is angry she will cry with no loss of control over her temper. She was outgoing and friendly before her motor vehicle accident but now she is quiet, reserved, and withdrawn. She was fully oriented to time, person and place. She was able to recite 5 numbers forward and 3 numbers in reverse. She did not recite the 3 objects that were named for her, she recalled 2 of them 3 minutes later. She correctly identified the current president. She gave names of [REDACTED] and [REDACTED] as past presidents. She gave her birth-date as [REDACTED]. 5 large cities were Holland, Grand Rapids, Chicago, Detroit, and Carver City. She was unable to identify any current famous people but she gave the Gulf spill as a current event. In calculations, the claimant was unable to subtract 7's from 100 but she was able to subtract 3's from 20. She correctly multiplied 3 times 4 but gave a response of 63 for 7 times 8. In Abstract thinking, when she was asked to explain the grass is green proverb. She said that things are better somewhere else. When asked to explain the spilled milk proverb, she said that she didn't know because she never understood that one. In describing similarities and differences; when asked how a bush and a tree were alike, she said "both have roots." When asked how they were different, she said "the tree is taller than the bush." In judgment, when she was asked what she would do if she found a stamped addressed envelope, she said "she would put it in the mailbox." When asked what she would do if she discovered a fire in a theatre, she said "run". When asked about her future plans, she stated that she didn't have any (p. 26).

Claimant was diagnosed with major depressive disorder, panic disorder without agoraphobia, and a history of alcohol and drug abuse in long term sustained remission. Her Global Assessment of Functioning scale was a 50 and her prognosis indicates that the potential for the claimant to be gainfully employed in a simple unskilled work

situation under sustained and competitive basis is currently guarded. The combination of her physical stress along with her significant psychological stress greatly interferes with her ability to function at a level necessary for her to obtain and maintain full-time gainful employment. She is able to manage her own benefit funds and was last seen on August 6, 2010 (p. 27).

A mental residual functional capacity assessment in the record indicates that in many areas claimant is not significantly limited, she is moderately limited in the ability to understand and remember detailed instruction, the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods. She is also moderately limited in the ability to perform activities with a schedule, maintain regular attendance and be punctual within customary tolerances, the ability to work in coordination with or in proximity to others without being distracted by them, the ability to interact appropriately with the general, the ability to accept instructions and respond appropriately to criticism from supervisor's and the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The mental residual functional capacity assessment was filled out on August 6, 2010 (p.29).

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: anxiety attacks 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 a mental residual functional capacity

assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he 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.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 application

for Medical Assistance, retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

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

Date Signed: December 9, 2010

Date Mailed: December 10, 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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