

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-37181
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 12, 2010
Oakland 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 October 12, 2010. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Marlene Magyar. Marlene Magyar 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)?

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 January 25, 2010, claimant filed an application for Medical Assistance benefits alleging disability.
- (2) On April 30, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.17.
- (3) On May 7, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On May 21, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 14, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work as a housekeeper.
- (6) On the date of hearing claimant was a 46-year-old woman whose birth date is February 18, 1964. Claimant is 5'4" tall and weighs 175 pounds. Claimant had no driver's license and as an older driver cannot see. She smokes three packs of cigarettes per week and lives with her mother.
- (7) Claimant last worked as a housekeeper and also worked at a carwash cleaning cars.
- (8) Claimant alleges as disabling impairments: chronic obstructive pulmonary disease (COPD), arthritis, anxiety, and problems with her knees.

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).

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 last worked as a housekeeper and is not engaged in substantial gainful activity. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a health medical clinic assessment examination dated March 23, 2010, states that on her mental status examination that she is cooperative and pleasant overall, easy going and good natured. She exhibited a certain sense of humor and self deprecation. She stated that she does not like being obese and not being able to find a job and she cannot read and her mother calls her stupid, dumb, and so she is too slow. She attended special education throughout her school year until the 10th or 11th grade when she quit school because people were bothering her and calling her names. She displays spontaneity. No speech aberration. She appeared to be well oriented to time and person and place. She seemed to comprehend the scope of the examination. In immediate memory, she was able to repeat seven digits forward and six backward. In recent memory, she was able to recall all three objects displayed to her three minutes earlier. She could not say who the president was preceding [REDACTED]. Random recollection of presidents was [REDACTED], and [REDACTED]. She correctly stated her birth date. She stated the five large cities were [REDACTED], [REDACTED] and [REDACTED]. She could not recall any other names of large cities. She stated famous people were [REDACTED], the governor of Michigan. She could not name the capital of Michigan. She could not identify the [REDACTED] vice president. She said that [REDACTED] is now dead. She could not meet the country the U.S. is at war with. She said that the mayor of [REDACTED] is a black man. Calculation six times seven had no answer. Five times nine equals 45. Three times eight equals 36. The succession of serial sevens from 100 equals no answer and 20 minus 7 equals no answer. In abstract thinking, when asked to explain the proverb "You catch more flies with honey than vinegar." She stated lies like sugar is sweet. When asked to explain the grass is greener on the other side of the fence, she stated to be truthful after that note. In similarities and differences, when asked how bushes and trees are alike, she stated they are both green and made of

wood. They grow out of the ground and need water and sunlight to survive. They differ because trees are tall while bushes are short. If she found a stamped addressed envelope, she would place it in the mailbox. If she discovered a fire in a theater, she would put the fire out and use a fire extinguisher. She stated that as a condition of her probation, she receives treatment and counseling during a six-month period. She also revealed that she smokes half a pack of cigarettes daily. Her diagnoses was chronic alcohol and marijuana abuse now in remission. A history of cocaine abuse also in a state of remission. Nicotine dependence and mood disorder, personality disorder NOS and a present GAF from a psychiatric of view of 60. Her prognosis is indefinite and she would be competent to handle her financial affairs and benefits as long as she is alcohol and marijuana abstinent and remains under therapy (Pages 5 and 6).

A March 23, 2010 internal medicine examination indicates that the claimant is well-developed, well-nourished, cooperative and in no acute distress. She was awake, alert and oriented to x3. She was dressed appropriately and answered questions fairly well. Her height is 63 inches. Her weight was 202 pounds. Pulse equals 80, Respiratory rate equals 16. Blood pressure 110/70. Visual acuity without glasses 20/20 on the right and 20/100 on the left. HEENT: normocephalic/attraumatic. The eyes and lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema or exudates noted. Perra extra ocular movements intact. Ears: no discharge in the external auditory canal. No bulging erythema, perforation of the visible tympanic membrane noted. In the nose, there is no septal deformity, epistaxix or rhinorrhea. In the mouth: teeth are in fair repair. Neck: supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid is not visible or palpable. ENT: external inspection of the ears and nose reveal no evidence of acute abnormality. The chest is symmetrical and equals expansion. The lung fields are clear to auscultation and percussion bilaterally. There are no rales, rhonchi or wheezes noted. No retraction noted. No accessory muscle usage noted, no cyanosis noted. There is no cough. The cardiovascular area had normal sinus rhythm. S1 and S2. No rubs, murmur or gallop. In the gastrointestinal colon: soft, benign, nonextended abdomen. Nontender with no guarding, rebound, palpable masses. Bowel sounds are present. The liver and spleen are not palpable. The skin had no significant skin rashes or ulcers. The extremities show that claimant had edema over both legs with crepitus in the right knee. No obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement is noted. (Page 8.) The examinee does not use a cane or aid for walking but does have a right knee brace. She has a limp on the right side. She was able to get on and off the table without difficulty. Gait and stance are normal. Tandem walk is done slowly. She was unable to do heel walk and toe walk. Able to squat to 40% of the distance and recover and bend to 60% of the distance and recover. Grip strength is equal bilaterally. The examinee is right handed. Gross and fine dexterity appear bilaterally intact. Abduction of the shoulders is 0-150. Flexion of the knees is 0-120. Straight leg raising align 0-50, while sitting 0-90. In the neurologic area, the patient is alert, awake and oriented to time person and place. Cranial nerve two and vision stated in vital signs. Three, four and six no petosis, nystagmus. Perra pupils two millimeters bilaterally. Nerve five, no facial numbness.

Symmetrical response to stimuli. Nerve seven symmetrical facial movements noted. Nerve eight can hear normal conversation and whispered voice. Nine and ten swelling intact gag reflex intact. Uvula. Eleven head and shoulder movements against resistance are equal. Twelve, no sign of tongue atrophy. No deviation with protrusion of tongue. Sensory function: intact to sharp and dull gross testing. Motor exam: reveals fair muscle tone without flaccidity, spasticity or paralysis. The impression is COPD, right knee pain and thyroid problem and depression. (Page 9.) A Medical Examination Report in the file indicates that claimant can occasionally carry 20 pounds or less and never carry 25 pounds or more. She can stand or walk at least two hours in an eight-hour workday and can sit about six hours in an eight-hour workday. She could use both upper extremities for simple grasping, reaching, pushing, pulling and fine manipulating. (Page 11.) A second Medical Examination Report dated December 14, 2009 indicates that claimant is 5'4" tall and weighs 190 pounds. Her blood pressure was 130/90. She had wheezing and rhonchi in respiratory area. She had right knee swelling and tenderness and some limited range of motion and she was anxious and depressed, but she was normal in all areas of examination.

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 which support claimant's contention of disability. The clinical impression is that claimant is stable. She could occasionally lift 20 pounds or less, frequently lift less than ten pounds and never lift 25 pounds or more. She could stand or walk less than two hours in an eight-hour workday and sit less than six hours in an eight-hour workday. She did not require assistive devices for ambulation and she could use both of her upper extremities for simple grasping, reaching, pushing, pulling, and fine manipulating, and operate foot and leg controls with her left foot and leg. She was somewhat limited in sustained concentration (Pages 15 through 17.) 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, 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 [REDACTED], published by the [REDACTED]... 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 47), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether [REDACTED] is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of [REDACTED] to a person's disability.

When the record contains evidence of [REDACTED], a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. USC 423(d)(2)(C), 1382(c)(a)(3)(J) [REDACTED]. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the [REDACTED] Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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

Date Signed: June 24, 2011

Date Mailed: June 27, 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.

LYL/tg

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