

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-37885
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
July 7, 2010
Van Buren 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 7, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the State Office of Administrative Hearings and Rules Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the record in its entirety.

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 March 13, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability. A second application was filed on October 27, 2009, and a third application was filed on January 11, 2010, with a retroactive application for November 1, 2009. The applications are herein consolidated.
- (2) On March 1, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment's lack duration.

- (3) On March 3, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On May 28, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 16, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an internist examination and psychiatric evaluation.
- (6) The hearing was held on July 7, 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 January 7, 2011.
- (8) On January 25, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had chronic leg and back pain. Her MRI showed some degenerative changes. An EMG nerve conduction was unremarkable. She received some lumbar injections and had some relief of her symptoms. There was no evidence of significant neurological abnormalities. Her gait and station are normal. She has a history of depression with an unremarkable mental status. In November 2010 her affect was bright. The claimant's impairment's did 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 unskilled light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and history of unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) On the date of hearing claimant is a 45-year-old woman whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 150 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked [REDACTED] as a self-employed cleaner. Claimant has also worked as a machinist and as a bar tender.
- (11) Claimant alleges as disabling impairments: seizures, a bad back, migraine headaches, anxiety, depression, hypertension, hysterectomy, and degenerative disc 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).

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 2009. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she lives with her boyfriend and receives the Adult Medical Program. She does not have a driver's license because she has seizures. She does nothing by herself and she stated that she is unable to bathe and dress herself. Claimant stated that she could walk for 20 minutes, stand for 15 minutes, sit for 30 minutes and is right handed. Claimant testified that her level of pain on a scale from 1-10 without medication is an 8 and that her heaviest weight that she can carry is a 10. Claimant testified that she does smoke a half pack of cigarettes per day and she does drink alcohol but she does not do drugs. Claimant testified that she was incapacitated for most simple activities.

A [REDACTED] medical examination report indicates that the clinical impression is that claimant is stable and she can occasionally carry 20 pounds or less but never carry 25 pounds or more. Claimant can sit less than 6 hours in an 8 work day and stand or walk less than 2 hours in an 8 hour work day. Claimant can use her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and can operate foot and leg controls with her right leg and has no mental limitations (pp. A1-A2).

An MRI of the thoracic spine dated [REDACTED] indicates that claimant had an unremarkable MRI of the thoracic spine. Posterior disc protrusion at C5-C6 with narrowing of the ventral thecal sac (p. 40).

A CT scan of the abdomen and pelvis without contrast dated [REDACTED] indicate that there is no suspicious mass or acute inflammatory change of the abdomen and pelvis. Fatty infiltration of the liver. Moderate facet arthropathy of the lower lumbar spine and moderate degenerative change of the sacroiliac joints (p. A5).

An MRI of the lumbar spine dated [REDACTED] indicates that there are multiple levels of degenerative change. Radiculopathy, the most significant level occurs at L3-L4 with a mild broad based disc protrusion above the proximal right exiting nerve root (pp. 7-8).

A [REDACTED] [REDACTED] indicates that claimant looks uncomfortable but she was cooperative with the examination. She had good eye contact. The claimant is well nourished, well hydrated and in no acute distress. She was alert and oriented x3. Memory, attention span and concentration were intact. The claimant converses appropriately with clear speech and good fund of knowledge. On cranial nerve exam, there are no cranial nerve deficits identified. HEENT: normal cephalic, atraumatic. Hearing and vision are grossly intact. CV, she has a 2+ dorsalis pedis pulses. The hands and feet are symmetric without edema and with good capillary refill bilaterally. Lungs, the lungs are clear to auscultation bilaterally. The peripheral exam, she has functional pain with range of motion of the bilateral hips. Knees are grossly stable. There is no tenderness trochanteric palpation. Negative favor or bilaterally. Straight leg raise is negative bilaterally. The back and spine have no focal

areas of tenderness. There is good range of motion; no muscle spasm is noted. In the motor skills there is a good 5/5 strength in the upper and lower extremities bilaterally. Areas tested were in the upper extremities; grip, wrist flexion, wrist extension, biceps flexion, triceps flexion, shoulder abduction. In the lower extremities, foot flexion, foot extension, knee flexion, knee extension and hip flexion. There is normal tone with no evidence of atrophy or abnormal movements. In her gait, she is able to ambulate around the room in a tandem fashion but rather slowly. She looks uncomfortable. She is able to bend backward with fairly good range of motion, but is guarded with bending forward and complains of pain when deep palpation of the lumbosacral junction. No tenderness to palpation over the S1 joints or greater trochanteric bursitis. She has increased muscle tone along the lumbar paraspinal. Normal gait and station including tandem walk (p. 10).

The claimant is able to ambulate on heels and toes. Balance and coordination are intact. Sensory sensation is intact to pinprick, vibration, and proprioception in the bilateral upper and lower extremity. Reflexes are 2+ in the lower extremities. In the lower extremities; patellar and Achilles reflexes. No evidence of Babinski's or Hoffman's appreciated.

MRI of the lumbar spine in [REDACTED] shows degenerative changes at L5, S1 with modic changes in the L5 vertebral body. I do not see anything to explain her left leg symptoms (as stated by the doctor). She has a small disc protrusion at L3, 4 that may give her some leg discomfort but she does not have any right leg pain at that time. The assessment was severe low back pain. Lumbar spondylosis. Left leg numbness and tenderness (p. A11).

A [REDACTED] MRI lumbar spine indicates that there are no significant changes from [REDACTED]. There was no impingement seen. There is disc degeneration at L3-L4 which looks slightly increased. There was no interval change. No impingement or acute herniation. There was moderate chronic disc degeneration at L5-S1 level with mild left foramen stenosis. There was mild disc degeneration at L3-L4 and L4-5 levels with mild right foramen stenosis, but without any significant abnormality on the left side. No convincing etiology for left radiculopathy seen. Claimant was diagnosed by psychologist and major depressive disorder, anxiety disorder, with a GAF of 49 on [REDACTED].

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: depression and anxiety 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 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 45), with a high school education and

an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.20.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) 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 DAA to a person's disability.

When the record contains evidence of DAA, 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 indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. 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 DA&A 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

