

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: 2010-39091
Issue No: 2009, 4031

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris 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, a telephone hearing was held on July 13, 2010 by Administrative Law Judge [REDACTED], who has since left employment with the State Office of Administrative Hearings and Rules. This hearing was completed by Administrative Law Judge [REDACTED] after reviewing the record. Claimant personally appeared and provided testimony.

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 March 31, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On May 5, 2010, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work, per 20 CFR 416.909. (Department Exhibit A, pages 1 – 2)
- (3) On May 11, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On June 9, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 22, 2010, the State Hearing Review Team again denied claimant's application stating that she was capable of performing past work, pursuant to CFR 416.920 (e). (Department Exhibit B, pages 1 – 2)
- (6) A telephone hearing was held on July 13, 2010.
- (7) Claimant alleges as disabling impairments Crohn's disease, depression, asthma, anemia, carpal tunnel syndrome and degenerative disc disease.
- (8) Claimant is a 32-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 118 pounds. Claimant is a high school graduate and completed some college, earning an associates degree. Claimant is able to read and write and does have basic math skills.
- (9) Claimant last worked in May, 2005 as a front desk clerk for a hotel. The claimant also has a history of being a sales clerk and working retail.
- (10) Claimant lives with her parents, who support her at this time. Claimant has a driver's license and is able to drive. Claimant reports that she can cook, grocery shop and perform housekeeping duties. Although, claimant indicates that she is limited in these abilities at times due to her frequent need to use the restroom.
- (11) Claimant was denied for RSDI at step one and indicates an appeal is pending with the Social Security Administration.
- (12) On February 4, 2004, the claimant underwent bowel resection surgery for a pelvic abscess and a secondary right tubo-ovarian abscess. The claimant was also diagnosed with Crohn's disease in the terminal ileum and the cecum. (Department Exhibit A, pages 45 – 58)
- (13) A November 20, 2006 psychiatric exam found the claimant to be oriented to time, person and place, having good verbalization skills with clear, coherent and goal-directed speech. Claimant's cognition was within normal limits, her memory was grossly intact, and she had good concentration ability, comprehension within normal limits, good judgment and fair insight. The claimant was continued on her Wellbutrin for depression. (Department Exhibit A, pages 39 – 42)
- (14) An April 25, 2008 evaluation found the claimant to be quite stable over the last five months and the claimant reported that her medication regime was adequate for her emotional needs. (Department Exhibit A, page 37 – 38)
- (15) A September 11, 2008 examination by the claimant's physician found all examination areas to be within normal limits. The claimant was stable with no limitations. (Department Exhibit A, pages 29 – 30)

- (16) A January 7, 2009 examination by the claimant's physician found all examination areas to be within normal limits, with the exception of tender thoracic paraspinal muscles. The claimant was stable with no physical or mental limitations. (Department Exhibit A, pages 16 – 17)
- (17) An April 7, 2010 examination by the claimant's physician found that the claimant was stable, but also deteriorating due to weight loss. The physician found the claimant had degenerative disc disease, although no MRI is contained in the record. The physician found some physical limitations for lifting, repetitive action and a standing/walking option, but no mental limitations. (Department Exhibit A, pages 7 – 8)

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).

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 2005. Claimant is not disqualified from receiving disability at Step 1.

The claimant reports that when she gets stressed, her Crohn's disease flares up. Claimant reports that the flares result in her having to use the restroom excessively, causes anemia and that she has trouble absorbing nutrients. The claimant reports that she is moody and has depression. The claimant states that she has degenerative disc disease and that this causes her back to go numb if she sits or stands for too long. Claimant states she is also restricted from lifting too much and is not supposed to do a lot of bending. Claimant also reports that she has carpal tunnel syndrome that causes her difficulty when using her hands.

There is very little objective evidence in the record. The claimant told a treating physician that she had dyslexia, but there is no testing or documentation in the record that evidences this is true. The claimant has been diagnosed with depression, Crohn's disease, allergies and Gastroesophageal Reflux Disease (GERD) by her treating physician. The claimant's April 7, 2010 examination by her physician indicates that the claimant had thoracic degenerative disc disease, but there is no MRI or other report to verify the condition and its severity. There is no diagnosis or evidence of carpal tunnel syndrome or asthma, other than the claimant's self-report. The claimant was found to be losing weight due to the Crohn's disease at the April 13, 2010 examination, but at the hearing claimant reported that she was 118 pounds, which shows she has gained a small amount of weight since the April 13, 2010 examination that found her to be 109 pounds.

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. The claimant's latest examination report by her treating physician notes some physical limitations. The claimant can only occasionally lift 20 – 25 pounds and is completely restricted from lifting 50 pounds or more. The claimant should stand/walk about six hours in an eight-hour workday. The claimant can not do repetitive reaching and pushing/pulling with either hand/arm and is restricted from repetitive operating of foot/leg controls.

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. In fact, the objective evidence in the record establishes the claimant has no mental limitations and that her depression is under control through appropriate medication.

It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's physical impairments meet the *de minimus* level of severity and duration required for further analysis.

The analysis now proceeds 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.

The analysis at Step 4 based is based upon claimant's ability to perform her past relevant work. The claimant's past relevant employment has been as a hotel clerk and in retail sales. 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 claimant is denied disability 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform medium, 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 medium, 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 medium, light or sedentary 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 medium, light or sedentary work even with her impairments. Considering claimant's vocational profile (younger individual, greater than high school education, and history of semi-skilled work—skills transferrable) and relying on Vocational Rules 203.29; 202.22; and 201.29, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 and/or State Disability 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 and State Disability 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.

/s/ _____
Suzanne L. Morris
Administrative Law Judge
On behalf of Jana Bachman
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/17/11

Date Mailed: 3/17/11

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.

[REDACTED]