

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

IN THE MATTER OF:



Reg. No: 201040039
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: July 22, 2010
Kent 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, telephone hearing was held on July 22, 2010. Claimant personally appeared and testified. This hearing was originally held by Administrative Law Judge Ivona Rairigh. Judge Rairigh is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. 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), 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 and State Disability Assistance benefits alleging disability.
- (2) On May 20, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On May 25, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On June 10, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 2, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requesting a copy of her physical examination and her psychological 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 August 30, 2010.
- (8) On August 31, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.22.
- (9) On the date of hearing claimant was a 45-year-old woman whose date of birth was August 19, 1964 . Claimant is 5'4" tall and weighs 135 pounds. Claimant completed the 12th grade and was able to read and write and does had basic math skills.
- (10) Claimant last worked in 2004 in insurance.
- (11) Claimant alleges as disabling impairments: degenerative disc disease and anxiety disorder.

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 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).

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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychological evaluation dated July 6, 2010 indicates the claimant arrived on time and had taken a bus to the appointment since she does not have a driver's license. She was ambulatory, right handed and did not wear glasses. She was dressed in a tank top, shorts, flip-flops, with dark hair pulled back and hazel eyes. She eats one meal plus snacks a day, sleeps seven hours a night, takes a shower every other day and brushes her teeth twice a day. She has a tooth missing in the front and reports that she passed out from malnutrition. That she fell when she was going through alcohol withdrawal. The patient was in contact with reality. She was cooperative, polite and appeared nervous and anxious. She moved frequently in her chair, twitched her leg, but maintained good eye contact. She was pleasant, smiled and laughed at times. She reports that her self esteem is higher than it was in the past. She states "I went through bankruptcy and before that had a really big house". "I am happier now than I was then". She rates her current self

esteem as a 10 on a scale from 1-10. The patient was oriented, alert and spontaneous. Her speech was clear, coherent and fluent. At times her speech was pressured and her response was tangential and overly detailed. This was easily modified with simple redirection. Her thought processes were relevant, logical and connected. No unusual mental activity was noted. The patient denies delusions, hallucinations, obsessions, feelings of persecution, paranoia, blackouts, feelings of hopelessness or worthlessness, suicidal ideations or attempt, or homicidal ideation. She was not somatically preoccupied but does complain of chronic pain. The patient appeared anxious and she complained of a history of anxiety. Her greatest fear is of losing her mother. She admits she will swear and get loud when she is angry. She reports that she's always been outgoing. She states "I like people, and I like to see my friends, I just don't like crowds, the big festival, concerts or even going to the beach." She was oriented to person, place and time. In an immediate memory she was able to remember 7 numbers forward and 5 numbers backward. She was able to recall 3 out of 3 objects after a three minute delay. The patient was able to identify the current and previous presidents and gave the name of Ford and Nixon. In the past she gave her date of birth as August 19, 1964. She named five large cities as Grand Rapids, Detroit, Lansing, New York, and Fort Lauderdale. She named famous people as Celine Dion, Jennifer Aniston, Courtney Cox, Brad Pitt and Angelina Jolie and she stated that she doesn't really watch the news. In calculations she was able to subtract sevens from 100 and she stated that $5 \times 5 = 25$, $18/6 = 3$, $12 + 9 = 21$ and $11 - 3 = 8$. In abstract thinking she said the proverb of the grass is always greener on the other side means that their life is better than hers". She stated the proverb don't cry over spilled milk means if things already happened why cry over it, it's done. She stated that a bush and tree are alike because they both have leaves and their different because the tree is taller. She said an apple and an orange are alike and that they are fruit and they are different because one is orange and one is red or green. When asked what she would do if she found a stamped addressed envelope lying on the ground she would leave it alone and she saw fire in a theatre she would make it to the reception area and notify them or exit the building and she stated she didn't have any future plans. In the additional information section she reported that she had no problems related to alcohol abuse and that she does not believe that she is an alcoholic. She does not exceed more than two beers in one night. She does not have any increase in tolerance, black outs, hangovers or current legal or relational problems related to her alcohol use. She was diagnosed with panic disorder without Agoraphobia, Anxiety Disorder NOS, alcohol abuse in sustained full remission, and a Global Assessment of Functioning of 60. The prognosis indicated that the potential for the patient to become gainfully employed in a simple unskilled work situation on a sustained and competitive basis is fair pending psychiatric treatment for symptoms of anxiety. She would be able to manage her own benefit funds. (Pg A3 and A4)

The medical examination report dated July 9, 2010 indicates that claimant's visual acuity in the left eye was 20/100 and the right eye was 20/70. On her skin she had old scars from tubal ligation tumor removal from back of the neck and repair of jaw surgery. Her left arm scars were from an old motor vehicle accident. She had generalized dermatitis; small red mostly pin-point lesions without drainage but some with scab formation. Good turgor. No cyanosis noted. In the head and neck: The skull was

normocephalic. Normal hairline distribution. Normal thyroid. Neck was supple. The eyes had no nyastagmus, PERRLA, EOM full. Conjunctiva and sclera were unremarkable. Fundoscopic examination revealed no acute pathology. The ears had normal canals and tympanic membranes bilaterally. In the mouth and throat there was normal oral mucosa without lesions of the lips noted. The tongue, uvula, and soft palate moved appropriately with phonation. The condition of the teeth was poor, with 1 top front tooth being absent. The posterior oropharynx was clear and not injected. Lymphatics: There was not acute cervical adenopathy palpable. The chest respirations were equal and bilateral excursions. Chest was symmetrical and no intercostal retractions noted. (Pg A6)

In the cardiovascular area there was regular rate and rhythm equaling 106 BPM without murmurs. S1 and S2 were physiologic. There was no S3 or S4 present. There were no rubs, clicks, heaves, snaps, or bruits noted. Peripheral pulses were present and equal in the upper extremities and dorsalis pedis arteries bilaterally. The lungs were clear to auscultation in both anterior and posterior lung fields without evidence of rales or rhonchi. In the abdomen there was no splenomegaly or masses palpable. The liver edge was palpable at 1 finger-breadth below the right costal cage in the MCL. No tenderness to light or deep palpation. Bowel sounds were normal. In the extremities there was no clubbing, cyanosis or pretibial edema. Left ulnar bony prominence, with history of fracture. Bunions at medial great toes. Neurological Exam: The patient was alert and oriented x 3. Mentation was intact although formal mental status exam was not performed at this time. Manner, affect, and dress were appropriate. She was somewhat anxious with rapid speech. Throughout the consultation she was picking at her clothing. With cerebellar testing, namely finger to nose, this was performed without significant tremors, dysmetria or pronator drift. Cranial nerves tested were grossly intact. Motor strength testing was 5/5 in all muscle groups tested in the upper and lower extremities. Sensory examination was intact to light touch. Deep tendon reflexes were 2/4 and symmetrical in the upper and lower extremities. The patient was able to ambulate under here own power without using any external walking assist devices. Heel walking, toe walking, and tandem gait were normal. Rhomberg testing was normal. In the spine examination of the cervical and dorsolumbar spine revealed paravertebral muscle spasm at L4 on the right without gross abnormalities. Straight leg raising was unremarkable in the seated position at 110 degrees on the left but positive at 110 degrees on the right. Range of motion was normal. The impression was chronic low back pain with degenerative changes at L4-5 and a grade .5 spondylosisthesis of L4 on L5. Chronic neck pain with spondylosis most pronounced at C5-6 but also at C3-4 and C6-7. Posterior sub-capsular cataract. Uncontrolled hypertension with tachycardia, nicotine abuse, dermatitis and history of alcoholism and history of anxiety disorder. (Pg. A7)

Medical doctor indicated that claimant has degenerative disc disease in both her lumbar and cervical spine, with spondylosis in the cervical spine and spondylolisthesis in the lumbar spine. Her gait was normal but she did have tissue tension abnormality at L4 on the right as well as positive straight leg raising on the right. It is felt that she should be able to alternate sitting with standing, be able to perform nonrepetitive bending and

nonrepetitive stooping. She should be able to walk, climb stairs , and be able to perform nonrepetitive squatting. Twisting at the neck and at the low back should be avoided. She should be able to lift 5 pounds with the left upper extremity and 15 pounds with the right upper extremity. She should be able to perform fine and gross motor skills using her hands. (PG A7)

The clinical impression is that claimant is stable.

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. 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.

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 *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.

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 contained in the file indicate that claimant has a history of tobacco 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's Program 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/

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

Date Signed: July 26, 2011

Date Mailed: July 26, 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/cr

cc:

