

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201040934
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2010
Gladwin 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 July 29, 2010. Claimant personally appeared and testified.

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 April 19, 2010 claimant filed an application for Medical Assistance benefits alleging disability.
- (2) On June 2, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 4, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On June 18, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 9, 2010, the State Hearing Review Team again denied claimant application stating in its analysis and recommendation: The claimant is noted to have fibromyalgia and arthritis. The claimant is also noted to be complaining of migraines; the claimant is morbidly obese. It is reasonable that the claimant would retain the ability to perform sedentary tasks. The treating source statements are reconciled by the remainder of the evidence in particular the EMG report cited above. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of sedentary exertional work. Therefore, based on the claimant's vocational profile of 21 years old, at least a high school education, and a history of no gainful employment, MA-P is denied using Vocational Rule 201.27 as guide. Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.03, 1.04, and 11.14 were considered in this determination.
- (6) Claimant is a 21-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 290 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant recently lost 29-30 pounds.
- (7) Claimant has never worked any place but goes to community college full-time and takes 12 credits per term. Claimant took off from school for the summer but has 48 credits and has attended classes for 4 semesters.
- (8) Claimant alleges as disabling impairments: fibromyalgia, obesity, migraines, bilateral knee arthritis, osteoarthritis, neuropathy in the right elbow, depression, personality disorder, cysts on her ovaries, and acid reflux disease.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

...Medical reports should include –

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

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

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

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

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

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

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

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

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

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

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

At Step 1, claimant is not engaged in substantial gainful activity and has never worked. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that she has never worked and that she attends school full-time. She lives with her mother in a house and she is single with no children under 18. She does not have any income and she does not receive any benefits from the Department of Human Services. She does have a driver's license and drives back and forth to school 2-4 times per week and it's about a 20-minute drive one way to school. Claimant testified that she does cook all the meals and usually cook TV dinners or microwaves things and she grocery shops 2-3 times per month and she needs braces on her knees and usually uses the amigo cart when she shops or a cane. Claimant testified she does clean her home and does the laundry, dishes, vacuuming, and picking up and as a hobby she reads, writes, does schoolwork, goes to the movies, or watches television 4-5 hours per day. Claimant testified that she does not do any outside work. Claimant stated on the record that she can stand for 10-20 minutes, sit for 10-20 minutes, and that she has arthritis in her knees and a cane is recommended by her doctor. Claimant testified that she can walk from the building to the parking lot and that she cannot squat very well. Claimant can bend at the waist and shower and dress herself but not tie her shoes or touch her toes very well. Claimant testified that her lower back gives her trouble. Claimant stated

that her level of pain on a scale from 1 to 10 without medication is a 9/10 and with medication is a 5/6. Claimant testified she is right-handed and that she has neuropathy in her elbow and that her legs and feet are fine. Claimant testified that the heaviest weight she can carry is 5-10 and that she does not smoke and doesn't drink and has never done drugs. Claimant testified that in a typical day she wakes up and makes breakfast and helps her mother with her socks, picks up after herself, watches television, reads, cooks lunch, does the dishes and watches more TV, plays the Wii exercise, cooks dinner, showers, and then goes to bed.

A Medical Examination Report dated April 19, 2010 indicates that claimant weighed 294 pounds and that her blood pressure was 112/66. The clinical impression was not applicable because she was a student and she could occasionally carry 20 pounds or less and frequently carry 10 pounds or less, but never carry 25 pounds or more. Claimant could stand or walk at least in 2 hours an 8-hour workday and could sit about 6 hours in an 8-hour workday. She did not require any assistive devices for ambulation and she could use her upper extremities for simple grasping, reaching, pushing and pulling, and fine manipulating and could use both legs and feet for operating foot and leg controls. She could meet her own needs in the home. (Pgs. 80-81)

A letter from [REDACTED] dated April 14, 2010 indicates that claimant does have fibromyalgia and that there was tenderness over the mid thoracic spine, gluteal, sacroiliac and right anserine bursa region. She seemed to have a positive patellofemoral grind on the right only. On the neurological exam testing for cubital tunnel syndrome was negative. Phelan's sign was also negative. She is pursuing fitness and trying to lose weight. The only treatment recommendation would be to increase her level of fitness. (P. 82)

A June 17, 2009 cosmetic surgeon report indicates that claimant weighed in excess of 300 pounds and her height was 64 1/2 " tall, her temperature was 98.3, her pulse was 84, respirations 16, blood pressure sitting 122/72. Her general appearance was well developed. She speaks English and answers questions appropriately. In her ears the external auricles were within normal limits. The external auditory meatuses are without inflammation or cerumen. The tympanic membranes are intact without perforation or fluid level. No tenderness to the mastoids. In the nose the external nasal pyramid is in the midline. The anterior rhinoscopy reveals the nasal septum to be midline with an adequate airway. No evidence of any purulence was seen in the nose. In the oral cavity the posterior pharynx is without inflammation. The tongue is moist within the midline without coating, tremor, or deviation. The uvula is in the midline. The teeth are in good repair. No evidence of any gingival or buccal lesions. The tonsils are present graded 3 out of 4, smooth, no debris. Small oral airway noted. The neck is without masses or adenopathy. The trachea is in the midline. The cricovertebral click is present. The thyroid is normal size without tenderness or masses. The eyes extraocular muscles are intact. The neurological cranial nerves II-XII are grossly intact. The claimant is oriented to time, person, and place. Psychological she was normal and appropriate to the situation, no overt signs of depression or anxiety. The heart had a regular rate and

rhythm. The lungs were clear to auscultation. The impression was hearing loss in left ear by history, sleep apnea, and morbid obesity. (Pgs. 116-117)

The physical therapy progress note of July 25, 2008 indicates that claimant demonstrates bilateral upper extremity and lower extremity within functional limits. Spinal active range of motion was within functional limits without complaints of pain. Bilateral upper extremity is grossly 5/5. Bilateral lower extremity strength is 5/5 with hip extensors and hip abductors being 4/5. The claimant is able to complete 15 heel raises prior to complaints of fatigue. Minimal tenderness is noted over bilateral upper trapezius and lumbar paraspinals. The claimant demonstrates decreased hip flexor, quadriceps, and hamstring muscle length. (P. 54)

A progress note dated March 5, 2009 indicates that claimant was diagnosed with fibromyalgia, morbid obesity, and bilateral knee osteoarthritis. There was no swelling or effusion at the knee. Deep tendon reflexes were 2+ and symmetrical. Sensory examination was unremarkable. She had multiple trigger points due to fibromyalgia. (P. 36)

A Medical Examination Report dated March 24, 2010 indicates that claimant was normal in areas of examination except in the musculoskeletal she had positive Tinel at both wrists and both knees, and osteoarthritis. She had decreased light touch at bilateral median sensory distribution and depression. She is 5'6" and weighed 272 pounds. She could occasionally carry less than 10 pounds but never carry 10 pounds or more. She could stand or walk less than 2 hours in an 8-hour workday and could sit less than 6 hours in an 8-hour workday. She had a cane for ambulation and could use her upper extremities for simple grasping but not for reaching and pushing and pulling and fine manipulating or operating foot and leg controls. She had no mental limitations. (Pgs. 20-21)

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.

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 he 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 he 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 he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he 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 he 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 he 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 he 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 he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 21), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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.

Landis /s/ _____
Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 20, 2010

Date Mailed: August 23, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vc

cc:

