

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

IN THE MATTER OF:



Reg. No: 2010-43601  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 21, 2010  
Wayne County DHS (15)

**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 September 21, 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) 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 February 26, 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 June 14, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On June 21, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 27, 2010, the State Hearing Review Team again denied claimant's application stating in its' denial that claimant is capable of performing past work as a cook or cashier.

- (6) The hearing was held on September 21, 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 September 28, 2010.
- (8) On October 12, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: review of the medical evidence does not support any findings related to alleged conditions of palpitations or depression. There is evidence of GERD and hypertension but no severe limitations. There is a history of asthma and back pain and the evidence reasonably supports that the claimant would retain the ability to perform medium exertional tasks. The claimant retains the physical residual functional capacity to perform medium exertional work; there is no evidence of any psychiatric condition. The claimant's past work was un-described self-employment, accepted as being light and unskilled in nature. Therefore, the claimant retains the capacity to perform their past relevant work (self-employment). MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.04, 3.03, 4.04, 5.06, 11.14, 12.04 were considered in this determination.
- (9) Claimant is a 46-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 203 pounds. Claimant attended the 12 grade and does have a GED. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked in 2008 at a gas station and as a cook. Claimant has also worked at a plant or a factory.
- (11) Claimant alleges as disabling impairments: asthma, hypertension, depression, back pain, shortness of breath, raw throat, wheezing.

### **CONCLUSIONS OF LAW**

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 2008. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept her from working for a period of 12 months or more. Claimant did last work in 2008. Claimant does receive unemployment compensation benefits as of the hearing in the amount of \$█ per week.

The objective medical evidence on the record indicates that claimant testified that she lives with her sister in a house and she is single with no children under 18 who live with her. She does receive unemployment compensation benefits in the amount of \$[REDACTED] per week and does not receive any benefits from the Department of Human Services. Claimant does have a driver's license and is able to drive but has no vehicle and her niece usually takes her where she needs to go. Claimant testified that she does microwave food and make sandwiches. Claimant stated that she grocery shops one time per month and she usually rides the Amigo and she cleans her house by cleaning the tub and doing the dishes. Claimant testified that her hobbies are cooking, fishing and reading. Claimant testified that she can stand for 10 minutes and can sit with no limits. Claimant testified that she can walk to her front door and she can squat but it's hard. Claimant testified that she can bend at the waist while sitting and she cannot shower and dress herself or tie her shoes or touch her toes. Claimant testified that her level of pain on a scale from 1-10 without medication is a 10 and with medication is an 8. Claimant testified that she is right handed and that her hands and arms are fine and her legs and feet are fine. Claimant testified that the heaviest weight that she can carry is 5-6 pounds and she doesn't smoke, drink or take drugs. Claimant testified that on a typical day she sits down most of the day.

A February 28, 2010, MRI spine without contrast indicates that claimant has some posterior disc protrusion and degenerative facet arthropathy at L4-L5 resulting in mild spinal canal stenosis and moderate bilateral neural foraminal stenosis. She has right paracentral disc protrusion, which may impinge the descending intradural segment of the right S1 spinal nerve. There is also left foraminal disc protrusion from pressing the existing left L5 spinal nerve. There is degenerative facet arthropathy contributing to severe neural foraminal stenosis on the left and moderate neural foraminal stenosis on the right (p. 20).

A medical examination report in the file dated March 11, 2010, indicates that claimant was 5'7" tall and weighed 301 pounds. Claimant's blood pressure was 148/81 and she was right hand dominant. She was normal but had back pain and was obese and she did not have any mental limitations (pp. 10-11).

An MRI dated February 2, 2010, indicates that claimant had distal degenerative disc and facet disease with a grade 1 degenerative anterolisthesis on L4 and L5 and moderate stenosis of the left L4-L5 and L5-S1 neuroforaminal. There is no clear explanation from the right sided symptoms (pp. 16-17 of new information).

A July 27, 2009, treatment note indicates that claimant's temperature was 97.4, respiratory rate was 20 per minute, pulse rate was 70 beats per minute. Blood pressure was 148/110. Her pain level is a 10, her pain level is a 10, her weight was 289 pounds, and her height was 67". She was alert and in no acute distress. Her neck demonstrated no decrease of suppleness. Kidneys were normal, ears were normal, pharynx was normal, lungs: the pulmonary auscultation revealed abnormalities of good AF with occasional wheezes. Respiration, rhythm, and depth was normal. The cardiovascular area was normal to heart rate and rhythm, heart sounds were normal,

there were no murmurs heard and there was no edema present. The musculoskeletal system had subjective tenderness to palpation in the lower back and sacrum area. No lesions noted, no erythema. Ambulation was not limited. Speech was normal. In psychiatric mood she was euthymic. The skin's general appearance was normal and had no skin lesions. She had benign essential hypertension and back ache (pp. 7-8 new information).

A February 26, 2010, medical report indicates that claimant was alert and oriented, had moderate distress, was morbidly obese, and has use of accessory muscles of respiration. Pupils were equal, round and reactive to light, intact to accommodation, extraocular movements were intact, normal conjunctivae. She was normocephalic, atraumatic, oral mucosa was moist, no pharyngeal erythema, ear canals were patent. The respiratory air entry was fair, bilateral breath sounds were distant, scattered inspiratory/expiratory wheezes audible without auscultation. No dullness to percussion, no signs of consolidation. The cardiovascular had regular, regular rhythm, S1 auscultated, no murmur. Gastrointestinal was soft, obese, with no organomegaly, no lymphadenopathy. Normal range of motion, normal strength and no tenderness in the musculoskeletal area. The neurologic area was alert, oriented, normal sensory, normal motor function, no focal point, and she was cooperative (p. 17).

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 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 46), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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.

