

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201054680
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 6, 2011
Macomb County DHS #20

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 January 6, 2011. 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 retroactive Medical Assistance (retro MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On March 12, 2010, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On July 12, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On July 15, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On August 25, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 30, 2010 the State Hearing Review Team again denied claimant's application stating that its analysis and recommended decision: The objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of past work as a deli clerk. The claimant's impairments do not meet/equal the intent or severity of the Social Security listing. The medical evidence of record indicates that the claimant retains

the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile closely approaching advanced age, high school education, and semi-skilled work history; MA-P is denied using Vocational Rule 202.15 as a guide. Retroactive MA-P was considered in this case and was also denied.

- (6) The hearing was held on January 6, 2011. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) No additional medical information was submitted by June 30, 2011. The record was closed and this Administrative Law Judge will proceed to decision.
- (8) On the date of hearing claimant was a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5'5" tall and weighed 180 pounds. Claimant attended the 11th grade and does not have a GED. Claimant was in special education for reading. Claimant was able to read and write and does have basic math skills.
- (9) Claimant last worked approximately in 2007 as a cook. Claimant has also worked cleaning houses, and as a deli clerk and for [REDACTED].
- (10) Claimant alleges as disabling impairments: Back and neck pain, herniated and ruptured discs, pneumonia, arthritis and bursitis of the shoulders, chronic obstructive pulmonary disease, cyst on her ovaries and scar tissue and her hips giving out as well as depression.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

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

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

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

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

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

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

...Medical reports should include –

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

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

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

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

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

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

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

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

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

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

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

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since approximately 2007. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she lives with a friend in a mobile home and that she is divorced with no children under 18 who live with her. Claimant does not have any income and receives Food Assistance Program Benefits. Claimant does not have a driver's license because it is suspended and she usually takes the bus 2 – 3 times per week. Claimant testified that she cooks 3 times per week and cooks things like steak and hamburger. Claimant testified that she does not grocery shop but she does clean the home by dusting. Claimant stated that she doesn't do any outside work but she does have hobbies of watching television 8 per day. Claimant stated that she can stand for 10 minutes, sit for 2 hours at a time and could walk a half block. Claimant stated she cannot squat or bend at the waist. Her knees are fine. Claimant stated that she is able to shower and dress herself, tie her shoes and touch her toes while sitting. Claimant stated that here 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, her legs and feet are fine but they swell. Claimant testified the heaviest she can carry is 5 pounds and that she does smoke 10 cigarettes per day, her doctor

has told her to quit and she is trying to quit. Claimant has testified the last time she has used illegal drugs was in high school.

The MRI of the lumbar spine done April 2010 showed advance degenerative disease at the L2-3 with moderate to severe narrowing. (Pgs 35 - 39)

The MRI of the cervical showed moderate size disc protrusion at C5-6. (Pgs 41 - 43)

In June 2010 the physical examination reported there were slight limitations of the cervical and lumbar spine. Claimant ambulated normally without a limp. (Pgs 53 - 55)

A physical examination dated June 10, 2010 indicates the claimant is a healthy looking adult female. Her height was 5'4" tall, weighed 168 pounds. Her standing posture was upright. The shoulders and pelvis remains symmetrical bilaterally. She was not in any apparent distress or discomfort. She was ambulating normally without any limp. She was not using an assistive devices such as a walker or cane. She can walk on her tiptoe as well as on the heels without any difficulty. She attempted squatting and performed 50% and stood up independently. On examination of the cervical spine the range of motion is normal without any muscle spasm. Flexion 45 degrees, extension 50 degrees, side bending 40 degrees and rotation approximately 60 degrees. Examination of Shoulders: Active abduction 170 degrees bilaterally. Internal and external rotation remained within the normal limit. No tenderness noted at the greater tuberosity. No impingement sign. Drop arm test is negative. Examination of the elbows revealed no abnormal clinical finding and the range of motion remained within the normal limit. There were two long scars noted on the left forearm one medially and one laterally for the surgical intervention following the fracture. Examination of the wrists show no abnormal findings and the range of motion remained within the normal limit. Examination of the hands, claimant could make full fist in both hands with complete closure. No evidence of atrophy of the intrinsic muscle of the hands on either side. Grip strength as tested on the dynamometer showed right hand 65 lbs, and left hand 50 lbs. She is right handed. Her pinch grip is intact. She can open the jar using the right and left hand without any difficulty. Examination of the lumbar spine: She maintains normal lordosis. Flexion 60 to 70 degrees, side bending 20 degrees, dorsal lumbar rotation 30. (Pg 55)

She had an [REDACTED] done on April 1, 2010. It's concluded in moderate sized right posterior paracentral disc protrusion at C5-C6. The impression was degenerative disc disease of the lumbar spine and neck pain. (Pg 57)

A medical examination report dated April 15, 2010 indicates that claimant was 5'5" tall and weighed 176 pounds her blood pressure was 122/70 is right hand dominant. Claimant was normal in all areas of examinations except musculoskeletal and mental Clinical impressions that claimant is deteriorating. Claimant could occasionally carry less than 10 pounds, but never carry 10 pounds or more. Claimant can stand or walk less than 2 hours in an 8 hour work day and can sit less than 3 hours in an 8 hour work day.

The clinical impressions 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 no disabling mental impairments:

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 person who is closely approaching advance age who has a 12th grade education with a history of semi-skilled work who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.15.

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).

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 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 27, 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

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