

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-7542
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 6, 2010
Oakland 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 January 6, 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 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 July 7, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On August 10, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 9, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On September 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 1, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient information and requesting a Social Security Administration DDS examination.

(6) The hearing was held on January 6, 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 January 6, 2010.

(8) On January 7, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: On April 10, 2009 there is a Social Security Administration ALJ decision for a closed period allowance which ended October 15, 2005. After this period the claimant was found to have significantly improved and to no longer have any limitations. The current Social Security Administration DDS decision does include limitations beyond the scope of the ALJ in that they found that the claimant would be limited to perform medium, exertional level tasks. Related to the alleged psychiatric condition, it was determined that the claimant has no severe psychiatric condition despite the diagnosis of depression. The findings of the Social Security Administration DDS decision of December 14, 2009 are being adopted as the Social Security Administration has administrative finality and

there is no significant difference in the findings of fact related to this application. The claimant retains the physical residual functional capacity to perform medium, exertional work. The claimant's past work was light and skilled in nature. Therefore, the claimant retains the capacity to perform her past relevant work. Medicaid-P is denied per 20 CFR 416.920(e). Retroactive Medicaid-P was considered in this case and is also denied. State Disability was not applied for by the claimant. Listings 1.02/04, 11.14, and 12.04 were considered in this determination.

(9) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5' 1" tall and weighs 159 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked May 22, 2009 as a baker and a cashier. Claimant has also worked as a deli clerk, stock clerk, baker/cook in school cafeteria setting up salad bar and stock.

(11) Claimant alleges as disabling impairments: degenerative disc disease, fibromyalgia, depression, arthritis, headaches, pain from the neck down, hypertension, and cramping fingers.

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 not worked since May 22, 2009. Claimant is not disqualified from receiving disability at Step 1

The objective medical evidence on the record indicates that a physical examination dated [REDACTED] includes that claimant's blood pressure on her right arm was 150/90 and the left arm was 150/90. Pulse was 68 and regular. Respirations were 12. Weight was 165 pounds. Height was 62.5" with no shoes. The claimant was cooperative throughout the exam. Hearing appeared normal and speech was clear. Gait was normal. The claimant did not use an assistive device for ambulation. On the skin there were no lesions appreciated. There was no cyanosis or clubbing. In the eyes, the visual acuity in the right eye was 20/50 and the left eye was 20/50 without glasses. The sclera was not icteric nor was there any conjunctival pallor. Pupils were equal and reactive to light and accommodation. The fundus appeared normal. The neck was supple with no thyroid masses or goiters. No bruits were appreciated over the carotid arteries. There was no lymphadenopathy. In the chest, the AP diameter was grossly normal. Lungs were clear to auscultation without any adventitious sounds. The heart was normal. S1 and S2 were normal. No murmurs or gallops were appreciated. The heart did not appear to be enlarged clinically. The PMI was not displaced. The abdomen was flat and non-tender without distention. There were no masses felt nor was there enlargement of the spleen or liver. In the extremities in the musculoskeletal area there were boney deformities at the bilateral hands. Grip strength was decreased bilaterally at 2-3/5. There was redness over the MCP joints and PIP joints. Peripheral pulses were easily palpated and symmetrical. There was no edema. There was no evidence of varicose veins. Range of motion of all joints checked was full. However, the claimant did have some pain while performing exercises of the right upper extremity at the shoulder and bilateral hands. The claimant did have pain in her feet upon standing. Upper extremity strength and lower

strength were decreased at +3-4/5 bilaterally. Fibromyalgia exists in the bilateral shoulders, knees, hands, and sometimes hips and feet. She had arthritis mainly in her hands and feet. Her cervical spine range of motion was normal. Her dorsolumbar spine range of motion was normal. The shoulder range of motion was normal. Elbow range of motion was normal. Hip range of motion was normal. The knees had normal range of motion. The ankles were normal. The wrists were normal. Hands and fingers flexion and extension were normal and PIP joints were normal. In the neurological area sensory functions remained intact. Reflexes were present and symmetrical. No disorientation was noted.

A physical residual functional capacity assessment conducted on [REDACTED] indicates that x-rays of the hands were normal. The range of motion was normal. There was decreased grip strength. There was redness over the finger joints. There was no edema.

A Social Security Administration determination dated [REDACTED] gave claimant a fully favorable decision for a closed period of time which ended October 15, 2005. The Social Security Administration indicated that claimant has medical improvement related to her ability to engage in substantial gainful activity and that she was disabled from [REDACTED] through [REDACTED] only.

Claimant testified on the record that she is single and lives with a friend in a house. Claimant has no children under 18 who live with her. Claimant has no income and receives Food Assistance Program benefits from the department. Claimant testified that she does not have a driver's license and that her eyesight is bad and her son takes her where she needs to go. Claimant testified that she does cook 1-2 times per day and cooks things like soup and sandwiches. Claimant testified she does grocery shop 1-2 times per month and needs help because of the pain. Claimant testified that she cleans her home and does the dishes, dusting,

laundry, but no carrying anything. Claimant testified that she used to garden but she's in too much pain and that she used to croquet but her hands hurt. Claimant testified that she watches television 4-5 hours a day and reads a half an hour a day. Claimant testified that she can stand for 45 minutes at a time, sit for 45 minutes to an hour at a time, and can walk 3 blocks. Claimant stated that she can sometimes squat and she can bend at the waist, shower and dress herself, tie her shoes, and touch her toes and that she does have some back pain. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 5. Claimant testified that she is right-handed and has some pain in her hands and arms and shooting pains in her legs and feet. Claimant testified that the heaviest weight she can carry is 8-10 pounds and that she does smoke 4-5 cigarettes a day and her doctor has told her to quit and she has been trying to quit. Claimant testified that in a typical day she sits on a heating pad, picks up her house, lets the dogs out, does the laundry, watches television, and reads.

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/psychiatric 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 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state.

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 no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant testified at the hearing and was oriented to time, person, and place. Claimant was able to answer all the questions at the hearing and was responsive to the questions. 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. Claimant's past relevant work was light work as she did work as a baker and a cashier. Claimant last worked May 22, 2009 and her impairments do not meet duration. As a baker, stock clerk, or

salad bar setup/cashier, this Administrative Law Judge finds that these jobs do not require strenuous physical exertion and there is insufficient medical 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. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. 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.

There is no 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'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. In addition, claimant did testify that she does receive some relief from her pain medication. 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 47), with a less than 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 and 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 Ismael Ahmed, Director
Department of Human Services

Date Signed: March 23, 2010

Date Mailed: March 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.

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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/vmc

cc:

