

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: 2010-7658
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 6, 2010
Monroe 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 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 August 25, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On September 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 21, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On October 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 3, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was admitted in December, 2008 due to suicidal ideation. She was also intoxicated at that time. A mental status in April, 2009 was basically unremarkable. Physical findings in April, 2009 showed that claimant limitation of motion of the spine and slightly decreased reflexes on the right. Gait was normal. There was no muscle atrophy or wasting. 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 simple, unskilled light work. In lieu of detailed work history the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment would not preclude work activity at the above stated level for 90 days. (pg. 38)

(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 March 3, 2010.

(8) On March 8, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20. The State Hearing Review Team, stated the additional information received does not affect the claimant's functional capacity. The SHRT decision of 12/3/09 is upheld.

(9) Claimant is a 36-year-old woman whose birth date is [REDACTED] Claimant is 5'6" tall and weighs 160 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in January, 2009 in a doctor's office as an intake paper-work person. Claimant has also worked taking care of patient's who have had traumatic brain injuries as a home health care aid and in a cafeteria making and delivering food in a prison.

(11) Claimant alleges as disabling impairments: fibromyalgia, spinal fusion, mental problems, substance abuse, a back injury, cramping and clinical depression.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 January, 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a November 19, 2009 progress note indicates that claimant was afebrile. She had stable vital signs with no distress. She had good range of motion of the neck in all directions. She had good range of motion of the shoulders, elbows and wrists. She did have a bit of a bruise on the left anterior forehead. She had good range of motion of hips. Negative straight leg raise test. Normal gait. She is diffusely tender across the entire back. An x-ray of the LS spine was checked to ensure stability of hardware from her prior surgery. She was counseled to try and limit her use of Vicodin. (new information pg. 1)

On page 6 of the medical records, a December 18, 2008 discharge summary indicates that claimant was admitted for a moderate to severe suicidal ideation. Upon admission her blood alcohol level was 0.21. Almost three times the intoxication range. (pg. 6). Claimant had a strong odor of ETOH noted on her breath and stated that she was at the bar and does not know how much she had to drink. (pg. 9) A December 12, 2008 physical examination indicates that the temperature was 98.5, the pulse was 88, respirations 20, blood pressure was 103/72. Her weight was 150 pounds and height was 5'9". The claimant appeared to be alert, oriented and in no distress. Head was normocephalic and atraumatic. The ears were normal landmarks. Eyes, PERRLA, EOMI. Nose, midline septum. Throat: Tongue and oropharynx normal. (pg. 13) The neck had no lymphadenopathy. The heart had regular rate and rhythm. Lungs were clear.

Abdomen was benign. The extremities had range of motion of 5/5. No calf tenderness and no edema. The neural examination: cranial nerves 2 through 12 were grossly intact. Urine drug screen was negative. Ethanol level on admission was 0.21, which is high. The diagnosis was depression with suicidal ideation and chronic back pain. (pg. 14)

A Disability Determination Services evaluation dated April 13, 2009 indicates that claimant was an average built lady with a weight of 182.6 pounds and a height of 66 inches. Blood pressure was 95/70, pulse 101 and regular, and respiration was 20 and non-labored. No accessory respiratory muscle activities was noted. HEENT: Head is normocephalic. Ear, nose and throat examinations are unremarkable. Eye examination revealed sclera non-icteric. Pupils were midsize and reactive to light. Fundi were benign without arterial sclerotic narrowing, AV nicking, exudates or hemorrhage. Neck is supple. No evidence of JVD, lymphadenopathy, or carotid bruit. (pg. 16) The chest was symmetrical. Expansion of lungs was equal and symmetrical bilaterally without evidence of rales, rhonchi, or wheezing. The heart examination does not show any murmur or gallop. S1 and S2 are normal. There is no S3, S4 or pericardial rub. The abdomen was soft and non-tender. No masses or organomegaly. There was no abdominal bruit. The liver and spleen were not enlarged. There was no ascitis. Extremities: No evidence of pedal edema or phlebitis. Peripheral pulses were bilaterally palpable in the lower extremities. No clubbing or deformity is noticed. In the musculoskeletal area: examination does not show any acute arthritis, arthropathy, joint swelling or deformity. Patient can ambulate without any assistance, can dress and undress without any difficulty. Movement at the lumbar spine is slightly painful and limited with forward flexion of 35 degrees, extension of 10 degrees and all other movements to 15 degrees. Heel, toe and tandem walking was normal. Movements at all other joints was normal. Grasp is 4/5 symmetrical bilaterally. Patient can get on an doff

the table without any difficulty. Gait was normal and balance was fair. Scar of surgery on lumbar spine has healed well. Movement at upper extremity was normal. Fist formation was normal. Sitting on the floor and getting up was not done at the patient's request. Straight leg raising was 40 degrees on the right and 60 degrees on the left with some pain and discomfort. Neurological: Affect was normal. All cranial nerves were intact. Deep tendon reflexes were slightly decreased on the right side but normal on the left. No muscular atrophy or dystrophy is demonstrable. Romberg sign was negative. The impression was chronic low back pain status post surgery for disc disease and a history of depression disorder. (pg. 17)

A Michigan Disability Determination Service psychological report dated April 7, 2009 indicated that claimant arrived punctually for her scheduled appointment; her mother drove her. Her height was 5'6" tall and her weight was 170 pounds. She noted no recent weight issues. Her posture was good and her gait was normal. Hygiene and grooming: she was casually groomed and dressed. She wore orange sweatpants and a navy blue Old Navy sweatshirt and tennis shoes. She stated her memory was good and provided information for the assessment from memory. Her ability to find locations as described as "good. I rely on Map Quest." Reportedly she is independent in her self care skills. She had no evidence of psychomotor agitation/retardation and her speech was spontaneous. Speech rate and tone were normal. She demonstrated adequate contact with reality during the interview. She did appear to be focused on herself and her symptoms. She was cooperative throughout the assessment. She demonstrated normal eye contact. Her stream of mental activity was spontaneous. She does not have hallucinations or persecutions. For obsessions she stated she counts anything; and everything has a place. She denies thought control by others and denies unusual powers but does have feelings of worthlessness. She denies any current intent or plan for suicidal or homicidal

behaviors. (pg. 21) Her mood was depressed. She was oriented to time, person and place. She repeated 7 numbers forward and 5 numbers backward immediately. She recalls 3 out of 3 objects 3 minutes later and stated that the President was Obama and her date of birth was July 6, 1973. She named 5 large cities as Chicago, Detroit, San Francisco, New York and San Diego and famous people of Angelina Jolie, Oprah and Brad Pitt. The current events were a recession but she doesn't watch the news and the States bordering Michigan were Illinois, Ohio and Wisconsin. (pg. 22) Her calculations, she was able subtract 7's from 100, and do serial 3's, as well as spell "world" backwards and add and multiply single digits. In abstract thinking, when asked what the statement "the grass is greener" meant, she said things aren't better on the other side than what you have now and "cry over spilled milk" meant don't get upset over the small stuff. When asked how a bush and a tree were alike, she said they need the same nutrients to grow and the difference was one is bigger, the tree is bigger. In her judgment, if she found a stamped addressed envelope she would put it in the mailbox and if she saw a fire in the theater she would yell fire and try to escort people out. Her prognosis was fair and she had the adequate capacity to manage her own benefits fund. She reported that she has serious difficulties with her back including degenerative disc disease, but her hearing ability, speech patterns and ability to grip objects appeared to be fine. (pg. 23-24)

A medical examination report dated June 24, 2009 indicates that claimant was normal in all areas of examination and that she was 5'6 1/2" tall and weight 171 pounds and her blood pressure was 120/76. The only area that she did not have a normal examination was the musculoskeletal. That she had diffuse tender points in her entire back and neck and shoulders. She had good range of motion and her shoulders, elbows, wrists, hips, knees, ankles and good grip strength bilaterally. Her clinical impression was that claimant was stable and that she

occasionally lift 10 pounds or less but never lift 20 pounds or more. She can stand or walk less than 2 hours in an 8 hour work day and could sit less than 6 hours in an 8 hour work day.

Assistive devices were not medically required or needed for ambulation. She could use her upper extremities for simple grasping, reaching and fine manipulating but not pushing and pulling and she could operate foot and leg controls with both feet and legs. (pg. 25-26)

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. The DHS-49, Medical Examination Report indicates that the examination areas are normal with the exception of the musculoskeletal examination area. The statement by the claimant's physician that claimant experiences pain and tenderness in her back is the only support given for the extreme physical limitation that claimant has established for herself. Claimant testified that she can carry 5 pounds. Claimant testified that she can stand for 30 minutes, sit for 30 minutes to an hour, walk a ¼ mile, shower and dress herself and tie her shoes if she lifts her leg up but cannot squat, bend at the waist and touch her toes. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is an 8. Claimant testified that her hands and arms are fine, her legs are fine except that she does have some pain and numbness from the back. 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.

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 mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The psychological report in the file indicates that claimant was oriented to time, person and place and that she was able to answer all the questions without a problem. Her prognosis was fair. 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. 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. 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. This Administrative Law Judge that claimant could work in an intake office doing paperwork or could work making and delivering food in a cafeteria, even with her impairments. There is insufficient findings in the file 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. Claimant does retain bilateral manual hand dexterity.

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 (36), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.20.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: May 19, 2010

Date Mailed: May 27, 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.

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