

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: 2010-7746

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 9, 2010

Wayne 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 February 9, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

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

(1) On December 11, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On June 25, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On June 29, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 15, 2009, claimant filed a second application for Medical Assistance benefits alleging disability.

(5) On September 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On December 21, 2009, the Medical Review Team denied claimant's second application and the determination will be consolidated into this decision to include both the December 11, 2008 and August 15, 2009 applications.

(7) On December 3, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing unskilled work per 20 CFR 416.968(a).

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(8) The hearing was held on February 9, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(9) Additional medical information was submitted and sent to the State Hearing Review Team on February 19, 2010.

(10) On February 24, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant has a history of depression but her thoughts processes were logical and coherent. She has a history of recurrent shoulder dislocations but no other objective abnormal physical findings. She has a seizure disorder on in December 2009, her doctor indicated her anticonvulsant levels were sub-therapeutic. 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 simple, unskilled medium work avoiding unprotected heights and dangerous moving machinery. Therefore, based on the claimant's vocational profile of a younger individual, 12th

grade education and a history of unskilled work, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

(11) Claimant is a 48-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 123 pounds. Claimant graduated from high school and is able to read and write, but not well. Claimant does have basic math skills.

(12) Claimant last worked in 2006 in a hotel in housekeeping making beds. Claimant has also worked as a cook at [REDACTED] and at [REDACTED] and at a plant making boxes.

(13) Claimant alleges as disabling impairments: seizures, dislocated shoulders, depression, muscle problems, and a nervous breakdown in 1983 and in 2008.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychiatric evaluation, dated September 2009, showed the claimant had normal speech. There was no psychosis evident. She had average intelligence. Her thought process was logical and coherent. Diagnosis was major depressive disorder. (New Information, page 8)

In December 2009, the claimant had bilateral shoulder pain with history of recurrent shoulder dislocations. She has had a seizure disorder with sub-therapeutic and anticonvulsant levels. Her mood was depressed. (New Information, page 9)

A Psychological Mental Residual Functional Capacity Assessment, February 1, 2010, indicates that claimant is markedly limited in most areas and moderately limited in other areas. (New Information, pages 5-6)

A psychological evaluation, dated September 3, 2009, indicates claimant has a history of substance abuse which includes the use of marijuana. The usage level reached the level of dependence and it has been less than one week since the last use. The longest period of abstinence from the unhealthy use of substances was less than one week. Claimant had a GAF of 50. The patient demonstrated good grooming, orientation x4, sadness, calm behavior with special smile, pleasant or happy interaction, poor eye contact, normal speech, impaired judgment, no psychosis evident, good insight, no delusional thoughts, no obsessive or compulsive thoughts, average intelligence, logical and coherent thought processes and timeliness. After a careful assessment of self-harm risk, the patient was determined to have no current suicidal thoughts, intent or plan. Regarding thoughts of harm towards others, there were no homicidal thoughts, plan or intent. The patient was receptive to advice. (New Information, page 8)

A Medical Examination Report, dated December 18, 2009, indicates that claimant was normal in all areas of examination except she had bilateral shoulder pain with a history of recurrent shoulder dislocations and a seizure disorder with sub-therapeutic anticonvulsant levels and a depressed mood. Claimant was 5' 2" tall and weighed 145 pounds. Her blood pressure was 150/90. (page 9) The medical examination report indicated that claimant could occasionally carry 10 pounds or less and that she could stand or walk for at least 2 hours in an 8-hour workday

and could sit about 6 hours in an 8-hour workday. Assistive devices were not medically required or needed for ambulation, and she could do simple grasping and fine manipulating with both upper extremities, but not do reaching, pushing or pulling with either. Claimant could not operate foot and leg controls with either foot or leg. Based upon her seizure disorder, she should not operate moving machinery. Claimant was limited in the area of sustained concentration. (New Information, page 10)

An EEG, dated [REDACTED] was mildly abnormal in a generally nonspecific manner and otherwise demonstrates normal Stage I and Stage II sleep. (New Information, page 12)

A February 28, 2008 Disability Determination Service examination indicates that claimant smokes one pack of cigarettes per day and has a history of alcohol abuse. Claimant was alert and oriented to time, person and place. His speech was normal. Cranial nerves II-XII were intact. She was able to tell her birth date and current president's name. Babinski was negative. Romberg test was negative. Finger to nose test was normal. DTRs are bilaterally symmetrical and 2+. Muscle power was 5/5 in all extremities. Pain and touch are intact bilaterally, symmetrical and equal. The patient could get on and off the table and chair without any assistance. Musculoskeletal area: range of motion of the C-spine was full. Range of motion of the thoracolumbar spine was full. There is no midline spine tenderness. Bilateral knees, hips and ankles have full range of motion. Bilateral shoulders, elbows and wrists have full range of motion. There is no obvious swelling or deformity in the shoulders bilaterally. There is minimal tenderness on palpation of the anterior shoulder cuff area. The dorsalis pedis is bilaterally 2+. No pedal edema. No clubbing or cyanosis. Capillary refill is intact and normal. Gait is normal. No cane is used by the patient. No limp was noted. The abdomen is soft and non-tender. No masses were felt. Bowel sounds were normal. There was no organomegaly. In the cardiovascular area:

S1 and S2 are regular. No murmur or gallop is noted. PIM is not misplaced. In the chest: Lungs were clear to auscultation bilaterally. The HEENT: Pupils were equal, round and reactive to light. Extraocular movements were full. No icterus. No conjunctival pallor. The fundi are benign. No exudates or papilledema noted. There is no JVD. No carotid bruits. No cervical lymphadenopathy. No thyromegaly. Throat is clear. There is no thrush noted. The tongue is central. The neck is subtle with full range of motion. No lesions noted on the tongue. Claimant was noted to be alert and oriented to x3. Height is 5' 6". Weight 134 pounds. Blood pressure was 130/90. Visual acuity was 20/30 for the right eye and 20/30 for the left eye. Both eyes were 20/30 with eyeglasses. The impression was a history of possible withdrawal seizures, chronic drug addiction, rule out psychiatric conditions, and history of bilateral shoulder pain with past dislocations. The patient was independent for activities of daily living. (pages 73-75)

A mental status examination, dated May 29, 2009, indicates that claimant was in contact with reality. Her self-esteem was low. Her motor activity was low. She had no motivation and some insight. Her speech was spontaneous and logical. She admitted to seeing shadows and occasionally will see her deceased mother. She hears voices. She feels people are after her and talking about her. She feels helpless at times. Her speech pattern was poor. She has suicidal ideations off and on. She has had two suicide attempts. She feels helpless and hopeless at times. She has trouble concentrating and focusing. Her mood was calm and affect was appropriate. The patient was alert and oriented to time, person and place. The patient repeated four of four numbers forward and zero of four numbers backward. The patient recalled zero of three objects 3 minutes later. When asked to name the past few presidents, the patient stated "Bush and bush." The patient could state her date of birth. When asked to name five large cities, the patient said "LA, Detroit, New Orleans." When asked to name current famous people, the patient said

“Michael Jackson.” When asked to tell current events, the patient replied, “the jobs.” When asked to subtract 7s from 100, the patient replied, “I need paper.” The patient said that 6 times 5 equals 30 and 7 plus 5 equals 12. When asked to interpret the grass is greener on the other side of the fence, the patient said “it looks brown.” When asked to interpret don’t cry over spilled milk, the patient said “let it go.” In similarities and differences, when asked how a bush and a tree are alike, the patient said “both are bushes” and when asked how they are different, the patient said “they are the same.” When asked what she would do if she found a stamped, addressed envelope, the patient replied, “mail it.” When asked to tell her plans for the future, the patient said, “leave me alone.” She was diagnosed with major depressive disorder and cannabis dependence in partial remission, as well as hypertension, head trauma and GAF of 55. Her prognosis was guarded, and she would be able to manage her own benefit funds. (Old Information, page 6-7)

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 insufficient 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. The mental residual functional capacity assessment in the record is not consistent with the other objective medical evidence contained in the file. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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.

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).

Claimant did testify on the record that she does grocery shop one time per month, that she takes the bus when she needs to go places or her daughter takes her, and that she does clean her house. Claimant testified that she can stand for an hour, sit for an hour at a time, walk 2 to 3 blocks, and that she does continue to smoke a pack of cigarettes per day.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. 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. Claimant's past relevant work was light work. As work as a housekeeping person, a cook at Burger King, or a cashier does not require strenuous physical exertion, there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work 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. The 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 continue to smoke cigarettes even though 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 gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 48), 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 203.28.

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: June 02, 2010

Date Mailed: June 3, 2010

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

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

LYL/cv

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