

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: 2010-88  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 05, 2009  
Ingham 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, an in-person hearing was held on November 5, 2009. Claimant personally appeared and testified. Claimant's was represented at the hearing by [REDACTED]

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 October 10, 2008, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits to July 2008, alleging disability.

(2) Claimant filed a second application on February 26, 2009, for Medical Assistance and Retroactive Medical Assistance benefits. The applications are herein consolidated.

(3) On February 6, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocation Rule 202.22.

(4) On April 10, 2009, the department caseworker sent claimant notice that the application was denied.

(5) On April 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On August 8, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant is capable of performing other work in form of unskilled work per 20 CFR 416.968(a).

(7) The hearing was held on November 5, 2009. At the hearing claimant waived the time periods and requested to submit additional medical information.

(8) Additional medical information was submitted and sent to the State Hearing Review Team on January 21, 2010.

(9) On January 26, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the evidence does not support that there is a disabling condition present at this time. The prior medical review team decision was for light transferrable skills. The prior State Hearing Review Team decision was for unskilled work with no physical limitations. The Social Security Administration has made a determination for remaining capable of unskilled tasks with no physical limitations. 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 simple and repetitive

work with no physical limitations. Therefore, based on the claimant's vocational profile of 39 years old, high school education and history of sedentary skilled; light semi-skilled and medium semi-skilled employment. Medicaid-P is denied using Vocational Rule 204.00 as a guide. Retroactive MA-P was considered in this case and is also denied. State Disability was not applied for by the claimant. Listings 11.02, 11.03, 11.04, and 11.14 were considered in this determination.

(10) Claimant is a 39-year-old woman whose birth date is [REDACTED] Claimant is 5'2" tall and weighs 208 pounds. Claimant is a high school graduate. Claimant is able to read and write and is able to add, however, she did determine that  $5+6=12$  at hearing. So this Administrative Law Judge will allow that she does have some mathematical limitations.

(11) Claimant last worked October 2006 at the [REDACTED] as a resolution specialist. Claimant has also worked selling wireless telephones, as a bartender, and as a medical records clerk.

(12) Claimant alleges that she is single and one child born in [REDACTED]

(13) Claimant alleges as disabling impairments: a cerebral vascular accident (CVA), with physical and mental sequelae, as well as left side weakness, hypertension, cholesterol blocked artery on the right side, diabetes mellitus, anxiety and confusion as well as paranoia. It should be noted that claimant was holding toy monkey and crying during the hearing.

#### 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 October 2006. Therefore claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Mental residual functional capacity assessment in the record dated March 25, 2009, indicates that claimant was not significantly limited in most areas and was only moderately limited in the ability to understand and remember detailed instructions, the ability to carry out detailed instructions, the ability to work in coordination with or proximity to others without being distracted by them, the ability to interact appropriately with the general public, the ability to get along with co-workers or peers without distracting them exhibiting behavioral extremes, the ability to respond appropriately to change in the work setting, and the ability to set realistic goals or make plans independently of others. (pp A1-A2)

An examination report dated September 3, 2009, indicates that claimant's weight was 230 pounds and her height was 62". Her blood pressure was 120/73 with a pulse of 72. She was moderately obese. She appeared to be in no acute distress. She was intermittently tearful throughout the examination. She had an unusual affect. She was awake and alert and able to provide adequate medical history. Her speech was low with no dysarthria or word finding difficulty. Her cranial nerves and her pupils were equal, round and reactive to light. Extraocular movements were intact without nystagmus. Visual fields were full to consultation. Her face was

symmetrical bilaterally. Muscle tongue and palate elevate symmetrically. Sternocleidomastoid and trapezius full strength bilaterally. In motor strength, she had normal muscle bulk and tone throughout. Muscle strength was 5 out of 5 in the upper and lower extremities, both proximally and distally. There was slight pronation of her left upper extremity, satelliting of her right upper extremity around her left and decreased tapping of left hand with venous fly trap testing. In coordination, her finger-nose-finger and heel-knee-shin were performed without dysmetria. Reflexes were 2+ and symmetrical in bilateral biceps, triceps brachioradialis, patella, and ankles. Toes were downgoing bilaterally. She had mild decrease to light touch and pinprick throughout her left side including her face, arm and leg compared to the right. Vibration was intact at both great toes. Romberg testing was normal. Her casual gait was narrow-based and steady with good arm swing and stride length. She was able to walk on toes, heels, and tandem without difficulty. A brain MRI from January 27, 2008, indicated multiple small areas of restricted diffusion throughout the right MCA distribution. A CTA of her head from May 2009 was reviewed and showed decreased caliber of the origin of the right MCA artery compared to the left. (p d3) Medical information dated June 22, 2009, indicates that claimant's hypertension and blood pressure are well controlled on her current regimen and she has type 2 diabetes and dyslipidemia for which she is being treated with medication.

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 on the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does not have any severe physical impairments. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition.

Claimant had a series of strokes in January 2008 but most of her residual physical condition has resolved. Claimant testified on the record that she is able to walk 2 blocks, stand for 10 minutes at a time and can sit with no limits. Claimant testified that she cannot squat because her balance is off, but she can bend at the waste for short periods of time, shower and dress herself, tier her shoes and touch her toes. Claimant testified that she can carry a gallon of milk and that she is right handed and had neuropathy in her hands, feet, and legs and has burning and tingling.

Claimant testified that her level of pain on a scale from 1-10 is a 4 with medication and a 8 without medication. She continues to smoke less than a pack a day but is trying to quit. Claimant testified that she gets up to take the dogs out and feeds the dogs, and sits at the computer and checks her email, then she blogs. She eats, takes a pill, checks the mail, reads, takes a nap and gets up and does housework. Claimant then plans dinner, plays on the computer, talks to her daughter, watches a movie and fixes dinner. This Administrative Law Judge finds that the information 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 limitation resulting from her reportedly depressed or anxious state. The mental residual functional capacity assessment in the record indicates that claimant is only moderately in some areas and not significantly limited in other areas. She is not markedly limited in any areas. A medical report dated February 18, 2009, indicates that in a typical day claimant does housework, listens to music, and grocery shops when her ex-husband drives. She has a dog with whom she is affectionate. She sleeps sometimes. She has no problems with sleep and no appetite problems. She provides her own personal care. Her contact with reality is adequate and normal, her motor activity is normal. She had no observed unusual behavior and

her degree of autonomy and dependency was adequate. Her self esteem was diminished and she was relaxed and pleasant. Her motivation was reduced. Her impulse control was adequate. Her separation anxiety was non existent and her tolerance for change was adequate. She was spontaneous. She had not speech impediment. She had adequate logicity, organization and thought. She no hallucinations, persecutions, delusions or obsessions. She had no recent suicidal thoughts. She was depressed and friendly. She was oriented to time, person, and place and she could immediately remember 5 digits forward and 3 digits backwards. She could not recall any of the objects after 3 minutes. She was able to name the past 4 presidents, her birth date and the schools that she attended. She was able to name 5 large cities, and 3 current famous people. She was able to identify a current even and the capital of Michigan as well as a number of states in the United States. She was unable to do serial 7's but she was able to do serial 3's with no complication or errors. When asked about the proverb the grass is always greener on the other side, she said, people seem to think it's better but it's no so. When asked don't cry over spilled milk, she said it's not worth it to cry over. When asked don't judge a book by its cover, she said, don't judge people keep an open mind. She stated that he similarities of an apple and an orange was that they were fruit, winter and summer were seasons, a bush and a tree were green and a cat and a mouse are animals. In Judgment, if she found a stamped addressed envelope on the street, she would put it in the mailbox, she would mail it. If she was the first person to see a fire in a theatre, she would get out. Her speech was articulate and her range of verbal expression and comprehension appeared to be consistent with estimated intelligence. Her attention and concentration were focus or sustained. Her mood was dysphoric, and her abstract attitude was preserved and her estimated general intelligence was normal. (p13) She was

diagnosed with a cognitive disorder NOS, mood disorder. She was able to make change, she had the ability to pay bills and she would be motivated to spend appropriately. (p14)

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 medical/psychiatric evidence in the record indicating that claimant suffers mental limitations resulting for her reportedly depressed state or resulting from her residual damage from her strokes. 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 rise to a finding that she would meet 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 and sedentary. There's insufficient objective medical/psychiatric evidence contained in file, which this Administrative Law Judge could base 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.

There is insufficient objective medical/psychiatric evidence in the record of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job.

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 his 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Claimant has submitted insufficient objective medical/psychiatric 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 and she does currently perform light work

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. 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. 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 39), 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 202.22.

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 his impairments. The department has established its case by a preponderance of the evidence. Claimant has not meet the criteria for disability purposes. Claimant does not meet any other criteria for Medical Assistance benefits eligibility.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: April 28, 2010

Date Mailed: April 29, 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.

2010-88/LYL

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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