

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011- 2935
Issue No: 2009, 4031

[REDACTED]

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 5, 2011. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] [REDACTED] 800 Monroe Ave NW Suite 314 Grand Rapids, MI 49503.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro 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 9, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On September 17, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment's are not exertional and that she should avoid heights and dangerous machinery.
- (3) On September 27, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On September 30, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 15, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical evidence supports that the claimant would reasonably retain obtain the ability to perform simple and repetitive task which also avoids exposure to dangerous machinery, unprotected heights, avoid the use of ropes, ladders and scaffolds. The medial evidence does not support any significant limitations associated with the allegations of tendonitis, fibroid tumors or rheumatoid arthritis. The claimant's impairments do no 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 and repetitive work which also avoids exposure to dangerous machinery and unprotected heights and avoids the use of ropes, ladders and scaffolding. Therefore, based on the claimant's vocational profile of 43-years old, at least a high school equivalent education and history of sedentary, semi-skilled and light unskilled employment MA-P is denied using vocational rule 204.00 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 impairments would not perform work activity at the above stated level for 90 days. Listings 1.02, 11.02, 11.03, 12.02, 12.04, 13.1, 14.09 were considered in this determination.
- (6) Claimant is a 43-year-old woman whose birth date is June 2, 1967. Claimant is 5' 6" tall and weighs 230 pounds. Claimant attended 1 ½ years of college and studied social work and is able to read and write and does have basic math skills.
- (7) Claimant last worked as a telemarketer in October 2008. Claimant receives unemployment compensation benefits in the amount of [REDACTED] per week.
- (8) Claimant alleges as disabling impairments: rheumatoid arthritis, fibroid tumors, depression, migraines, left arm tendonitis, epilepsy, fibromyalgia, hypertension, high cholesterol, insomnia, morbid obesity, hyperthyroidism, and migraines 5-6 per week, as well as memory problems, confusion and 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 Program

Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 2008. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that she has a severe impairment or combination of impairments which have lasted or will last the durational

requirement of 12 months or more or have kept her from working for a period of 12 months or more. Claimant did last work October 2008 in telemarketing. Claimant does receive unemployment compensation benefits in the amount of [REDACTED] per week as of the date of hearing. Therefore, claimant is disqualified from receiving disability at this step because even though she is not engaged in substantial gainful activity, she is holding herself out as able to work in order to receive Unemployment Compensation benefits.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she is married with no children under 18 that lives with her, she lives with husband in a house and she receives unemployment compensation benefits. Claimant does not receive any benefits from the Department of Human Services and does not have a driver's license because it was suspended because of her epilepsy. Her friends and husband take her where she needs to go. Claimant testified that she does cook 1 time per week and cooks microwave foods unless she does not grocery shop or clean house or do any outside work. Claimant testified she watches television 12 hours per day. Claimant testified she can stand for 5 minutes, and sit for 1 hour. Claimant testified she can walk less than half a block and cannot squat but she can bend at the waist. Claimant testified she's able to shower and dress herself, and tie her shoes but not touch her toes. Claimant stated that a level of pain on a scale from 1-10 without medication is a 5-10 and with medication is a 3-7. Claimant testified she is left handed and has rheumatoid arthritis and tendonitis in her arms and hands and she has rheumatoid arthritis in her legs and feet. Claimant testified she can carry 10 lbs that she does not smoke, drink or do drugs. Claimant testified that on a typical day she talks to her husband and watches television and then falls asleep. Claimant testified she's not to engage in sexual relations.

This Administrative Law Judge did consider all 651 pages of medical report contained in the record when making this decision.

A psychological consultation dated December 28, 2009, indicates that an MRI of the brain was performed on June 19, 2009. The results showed at least two very small T2 high-signal intensities in the white matter. This was thought to be a nonspecific finding. On a January 4, 2010, on MRI the brain was performed and showed no evidence of significant asymmetry in either signal intensity or size of the limbic structures to correspond to the clinical history of right temporal lobe seizures. A few scattered areas of nonspecific T2/FLAIR deep white matter hyperintensities were noted. Differential considerations would include old lacunar infarcts or sequelae of chronic small vessel ischemia. An EEG was performed on March 5, 2009. The results were within normal limits. No focal or epileptiform abnormalities were seen. A video EEG was performed on October 2, 2009. The results provided evidence to support the diagnosis of focal epilepsy arising from the right temporal region. This was supported by the ictal and interictal discharges and the seizure semiology. (Page 532). Claimant was found to be functioning in the low average range of intelligence. (Page 531). She was diagnosed with ICD-9 345 Epilepsy (Page 530). Claimant has a substance abuse history she went into residence treatment in 1993 for the use of alcohol, marijuana and cocaine. She has

alleged to have been clean and sober since that time. She was diagnosed with major depression, borderline personality disorder, and a current GAF of 48. (Page 487).

A medical report of July 20, 2010, indicates that claimant weighed 226 lbs and she was 65" tall and her blood pressure was 132/96 respiratory rate was 18, pulse was 82. She was alert and oriented times 3, she was in no apparent distress. She is well dressed and well groomed. (Page 401). On June 22, 2010, her blood pressure was 131/90, her weight was 230.6 lbs, 65" tall, her pulse was 75, temperature 97.9, BMI 38.4 Examination of bilateral lower extremity showed no swelling. No bipedal edema. Bilateral dorsalis pedis pulses were full and intact. Patient was able to ambulate without difficulty out of the examination room. The heart had no murmurs. No palpitations. S1 and S2 were present. There was normal rhythm. Regular rate. Had symmetrical chest expansions. No retractions. Clear breath sounds. (Page 400).

On June 15, 2010, claimant's heart had regular rate and rhythm. S1 and S2, no murmurs, rubs or gallops. The lungs were clear to auscultation. In the extremity there was 1+ nonpitting bilateral lower extremity edema involving the distal 1/3 of the lower extremity. Less than 3 second capillary refill. Sensation is intact. There is noted pain to palpation diffusely to the left wrist. There is less than 3 second capillary refills. Full range of motion on flexion, extension, eversion. Neurologically the claimant was alert and oriented times 3. Cranial nerves II-XII grossly intact. She reported no fevers or chills, no chest pain, shortness of breath. (Page 399).

On January 28, 2010, claimant was treated for suicide ideation and depression and she was given a cab voucher and ordered to drive her directly to Network 180 for a crisis intake and to then follow-up in two weeks. (Page 394).

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: anxiety, depression, and memory problems.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 43), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/17/11

Date Mailed: 3/17/11

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.

[REDACTED]