

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-3319
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 6, 2011
Barry County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for ALJ Jay W. Sexton

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, 2011. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Jay Sexton. Jay Sexton is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. This hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

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 September 13, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 13, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On October 14, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On October 25, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 17, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: The objective medical evidence presented does not establish a disability at the listing or equivalence level. In following the sequential evaluation process, the claimant is not engaged in substantial gainful activity. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The claimant retains the capacity to perform work of at least an unskilled medium level. Therefore, MA-P is denied per Vocational Rule 203.25. Retro MA-P was reviewed and denied. SDA is denied per PEM 261. This may be consistent with past relevant work. However, there is no detailed description past work to determine this. In lieu of denying benefits and capable of performing past work or denial of other work based on a vocational rule will be used.
- (6) The hearing was held on January 6, 2011. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on January 6, 2011.
- (8) On January 20, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the objective medical evidence present does not establish a disability at the listing or equivalent level. The collective medical evidence shows that the claimant is capable of performing medium unskilled work. 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 medium unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, 12 years of education, and medium unskilled work history, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (9) On the date of hearing claimant was a 48-year-old woman whose date of birth date is November 30, 1962. Claimant is 5'10" tall and weighs 170 pounds. Claimant is right handed and lives with her spouse. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked as a teaching assistant and tutor, as a bus driver and a home aide.

- (11) Claimant alleges as disabling impairments: fibromyalgia, myofascial pain, migraines, thyroid damage and depression, and rule out suicidal ideation, hypothyroidism, CMP, FMS, and possible multiple sclerosis.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

The objective medical evidence on the record indicates that physical examination in December 2010 reports she has a normal gait. There are no thyroid masses or goiter. She has full range of motion of all joints. Her grip strength is normal. Her motor strength was intact. She had intense sensation with no deficits. Her pain was controlled with medication. The migraines are treated with medication. Her blood pressure is 120/80 on the right arm and 120/80 in the left arm. Pulse was 16 regular. Respiration was 16. Weight was 174 pounds. Height was 69 inches with no shoes. Claimant smokes one-half pack of cigarettes daily since she was 16. She drinks one to two glasses of wine per week. She completed the 12th grade and can read and write and is right hand dominant. She worked formerly as a teacher's assistant. The patient was cooperative throughout the examination with an extremely flat affect. Hearing appears normal. Speech is clear. Patient exhibited normal gait. The patient did not use an assistive device for ambulation. On the skin, there are no lesions appreciated nor is there cyanosis or clubbing. In the eyes, the visual acuity in the right eye is 20/20 and the left eye is also 20/20 without glasses. The sclera are not icteric nor is there any conjunctival palor. Pupils are equal and reactive to light as accommodation. The fundus appears normal. The neck was supple with no thyroid masses or goiter. No bruits are appreciated over the carotid arteries. There is no lymphadenopathy. The chest AP diameters are grossly normal, the lungs are clear to auscultation without any addentitious sounds. The heart had normal S1 and S2. No murmurs or gallops are appreciated. The heart does not appear to be enlarged. The PMI is not displaced. The abdomen was soft and nontender without distension. There are no masses felt. Nor is there enlargement of the spleen or liver. In the extremities and muscles of the skeletal area, there are no obvious bony deformities. Range of motion of all joints checked as full. There is tenderness to palpation over bilateral cervical spine and the paraspinal muscles. There is some right shoulder tenderness and some cervical spine and strain that radiates down her right shoulder into her left right arm. She does have paravertebral spasms from approximately C4 to T1. There is no erythema or effusion of any joint. Peripheral pulses are easily palpated and symmetrical. There is no edema. There is no evidence of varicose vein. Grip strength is unimpaired. The hands have full dexterity. Her straight leg raising test was normal. The patient had no difficulty getting on and off the examination table, no difficulty heel and toe walking and no difficulty squatting. In the neurological area, the motor strength remains 5/5. Reflexes are 2/4

and symmetrical. There is no loss of sensation. No disorientation is noted. Upon questioning, there does not seem to be any memory loss in her many mental examinations. The patient scored very well and there were no deficits noted. (Pages A83 to A86.) The mental status examination indicates that claimant has good contact with reality and her thought processes were relevant and logical. She had a flat affect and was severely depressed. She was fully oriented. She had an Axis GAF of 50 and was diagnosed with a pain disorder as well as a mood disorder. The mental status examination prognosis was guarded and she was able to manage her own benefit funds and the mental status examination was conducted December 6, 2010. She was oriented x3. She was able to repeat seven digits forward and four digits backward. She was able to recall three items, cherry ice cream and book after three minutes. She named the President before our current President as [REDACTED]. She stated all the Presidents in the past 50 years as [REDACTED] and [REDACTED]. She had correctly identified the correct date of her birth. She stated the current President of the [REDACTED] is [REDACTED]. She named five large cities as [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. She named famous people who are currently alive as [REDACTED], [REDACTED] and [REDACTED]. When asked to describe something that happened recently on the news, she stated that the oil companies are fracking shale to get more oil of the ground, but it is pooling the water supply in [REDACTED] and [REDACTED]. When asked how many weeks there are in a year, she said 52. When asked who was [REDACTED], she stated a civil rights leader. When asked to subtract serial sevens from 100, she stated 93, 86, 79, 72, 76, 58. She was able to count by serial threes with no difficulty. She did the following math problems, eleven by four equals fifteen, six times seven equals forty two and thirty five divided by seven equals five. When asked the meaning of the saying about the grass being greener on the other side of the fence, she stated it is human nature to think people have it better than they themselves. When asked the meaning of saying about not crying over spilled milk, she said you cannot keep worrying about something that has already happened. You have to continue. When asked how a bush and a tree are alike, she stated they are both living things and they grow and have leaves. When asked how they are different, she stated that bushes are smaller and don't have a trunk like the tree. When asked how an orange and apple are alike, they are both fruits, when asked how they are different, she stated the color and the texture. When asked what she would do if she found an envelope in the street that is sealed, addressed and had a stamp on it, she said she would put it in a mailbox. When asked what she would do if she were the first person to discover fire in a movie theater, she stated, "I would yell out fire, I guess, and go for the exit." (Pages A76 through 82.)

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 which support claimant's contention of disability. 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: depression and anxiety.

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 [REDACTED], published by the [REDACTED]... 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 48), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that 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 activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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.



Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 15, 2011

Date Mailed: August 16, 2011

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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