

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

IN THE MATTER OF:



Reg. No: 20113323
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date:
January 20, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Marlene Magyar

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 January 20, 2011. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

This hearing was originally held by Administrative Law Judge Marlene Magyar. Marlene Magyar is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and 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), 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 March 18, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On July 9, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 203.27.

- (3) On July 16, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On October 14, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On November 4, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant was admitted in [REDACTED] with newly diagnosed diabetes and her condition improved with treatment. In July 2010 her vision was within normal limits with corrective lenses. Breath sounds were clear. She had no difficulty with manipulative tasks or ambulating. A mental status showed she did have an adjustment disorder but her thought processes were linear and sequential and she was coherent. The claimant's impairment's do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple unskilled medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, high school equivalent education and a history of unskilled and semiskilled 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. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (6) On the date of hearing claimant was a 47-year-old woman whose birth date is [REDACTED] [REDACTED]. Claimant is 4'11" tall and weighs 175 pounds. Claimant completed the 9th grade and received a GED. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked as a kitchen help in a nursing home and as a cook approximately in 2007. Claimant has also worked as home health care and as a cashier and in a factory running injection molding and packing product.
- (8) Claimant alleges as disabling impairments: chronic bronchitis, chronic sinusitis, misalignment of the spine and hips, neck bent in the wrong position, damaged pancreas, diabetes mellitus, high blood pressure, a lack of a thyroid, pleurisy, and restless leg syndrome.

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 and has not worked since at least 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychological evaluation from the Michigan Disability Determination Services indicate that claimant was in contact and oriented to time, place and person. She appeared to issue with self-esteem. She did not appear to be hyperactive or retarded. She seemed to have a poor degree of autonomy, seemingly dependent on her mother for day to day survival. She did not appear to exaggerate nor minimize her symptoms. There did not seem to be a fair of insight in to her issues. The claimant answered in the questions in a fairly coherent and straight forward manner. Short term memory seen affected by health issues and long term memory seem appropriate. Thought processes appeared linear and sequential. Her conversation seemed fairly well organized (Department Exhibit 2, p. 2).

Claimant denied hallucinations or delusions. There did not seem to be any since of the claimant feeling persecuted nor controlled by others. She admitted to mild suicidal ideation. She denied any past attempts. She admitted to issues with sleep and she had an overall feeling of worthlessness. Claimant admitted to depression and memory issues. She denied significant anxiety issues. She seemed to be quite upset with having to live off of her mother. She made fair eye contact with a flat affect. She seemed guarded. She seemed oriented to time, place and person. In immediate memory she repeated 4 numbers forward and 4 numbers backward. In recent memory she recalled 2 of 3 objects noted earlier in the session. For past presidents, she name Bush, Clinton, and Bush as the past few presidents. She had no difficulty remembering her birth date. She named Kalamazoo, Battle Creek, Lansing, Grand Rapids, and Detroit and large cities. She noted Brad Pitt and Angelina Jolie as current famous people. She stated that the oil spill and the war as current events. She subtracted 7's in the following order : 100, 93, 87, 73. She had no problems with simple addition or multiplication. When asked about the grass is greener statement, she responded, "Everybody always wants what they don't have". When asked about the spilled milk question, she replied, "Don't worry about things you can't change". In similarities and differences, she noticed a tree and a bush are similar because they would grow, and they differed in size. An orange and a banana were noted similar and that they were fruit and they differed in the kinds of fruit. She would mail an envelope that she had found and she would get everyone out if she discovered a fire in a theatre. Her diagnosis was adjustment disorder with mixed emotional feature and a current GAF of 55. Her prognosis was fair and she would probably benefit from health and wellness counseling to address her issue with diabetes and weight. She would be able to manage her own benefit funds (Exhibit 2, pp. 3-4).

A [REDACTED] medical examination report indicates that the claimant is cooperative in answering questions and following commands. The claimant's immediate, recent and

remote memory is intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provides a good effort during the examination. Her blood pressure on the left arm is 120/80, pulse is 16 and regular, respiratory rate is 78, weight is 196, height is 60.5" tall without shoes. The skin was normal. Eye and ears: the visual acuity in the right eye is 20/25 and in the left eye is 20/40 with corrective lenses. Fundi are poorly visualized. Pupils are equal round and reactive to light. The claimant could hear conversational speech without limitation or aides. The neck is supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no accessory muscle usage. There is regular rate and rhythm without enlargement in the heart. There is a normal S1 and S2. In the abdomen, there is no organomegaly or masses. Bowel sounds are normal. Vascular area; there is no clubbing or cyanosis present. There is no edema appreciated. The femoral, popliteal, dorsal pedis, and posterior tibial pulses are normal. Hair growth is absent on the lower extremities. The feet are warm and normal color. There are no femoral bruits. In the musculoskeletal area there is no evidence of joint laxity, crepitance, or effusion. Grip strength remains intact. Dexterity is unimpaired. The claimant could pick up a coin and open a door/. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting and no difficulty hopping. Range of motion studies were normal. In the neurological area cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes are 2+ and symmetrical. Romberg testing is negative. The claimant walks with a normal gait without the use of an assist device (Exhibit 2, pp. 6-8).

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 and depression.

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, she would be denied again at Step 4.

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

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

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

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

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of

walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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

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

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 46), 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.

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

