

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 [REDACTED]. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]. There were 3 applications that were herein consolidated. On [REDACTED], claimant filed an application for Retroactive Medical Assistance application for [REDACTED], claimant filed an application Medical Assistance, State Disability Assistance and Retroactive Medical Assistance, [REDACTED], claimant filed an application for Medical Assistance, and Retroactive Medical Assistance, [REDACTED], claimant filed an application Medical Assistance, Retroactive Medical Assistance and State Disability Assistance and benefits alleging disability.

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 [REDACTED], claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On [REDACTED] the Medical Review Team denied claimant's application stating that claimant could perform other work.

- (3) On [REDACTED], the department caseworker sent claimant notice that her application was denied.
- (4) On [REDACTED], claimant filed a request for a hearing to contest the department's negative action.
- (5) On [REDACTED], the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: 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 light unskilled work. The claimant's impairment do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant can retain the capacity to perform light unskilled work. Therefore, based on the claimants vocational profile claimant approaching advanced age, 12th grade education and semi-skilled work history MA-P is denied using Vocational Rule 202.15 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM261 because of the nature and severity of the claimant's impairments would preclude work activity at the above stated level for 90 days.
- (6) The hearing was held on [REDACTED]. At the hearing, claimant waived the time periods and requested to submit additional medical information. In addition, both claimant and her representative agreed that this Administrative Law Judge would determine eligibility for all applications from [REDACTED] forward.
- (7) Additional medical information was received and submitted to the State Hearing Review Team on [REDACTED]
- (8) On [REDACTED], the State Hearing Review Team again denied claimant's application stating in its analysis: the claimant had some swelling and tenderness in her knees in [REDACTED], her examination was basically within normal limits. She was able to ambulate without assistance. Her MRI of the cervical spine did show some disc herniation at C5-C6 and C6-C7. There were no neurological abnormalities noted. She does have a history of depression but she will be capable of simple 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 simple unskilled light work. In lieu of the detailed work history, claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age of 54, a 12th grade education and history of semi-skilled work, MA-P is denied using Vocation Rule 202.14 as a guide. Retro MA-P was considered in this case and is also denied. SDA is denied per PEM261 because the nature and severity

of the claimant's impairments would not preclude work activity at the above stated level per 90 days.

- (9) Claimant is [REDACTED] woman whose birth date is [REDACTED]. Claimant is [REDACTED]. Claimant is a high school graduate and is a [REDACTED]. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked in [REDACTED], as a [REDACTED]. Claimant has also worked closing mortgages and as a teller at [REDACTED] 14-15 years.
- (11) Claimant alleges as disabling impairments: degenerative disc disease, herniated disc, fibromyalgia, depression, weakness and numbness in hands and arms, a bad left hip, lower back pain, left hand numbness, depression, memory problems.

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 [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that she lives in a house with her brother and that she is single and her brother takes care of her. Claimant testified that she has no children under 18 and no income and does receive Food Assistance Program benefits. Claimant testified that she does have a driver's license and does drive a few times per month and drives herself to doctor's appointments and she drove herself to the hearing which is about a 30 minute drive. Claimant testified that she can cook soup and macaroni and cheese and she usually cooks one time per week and she can grocery shop one time per week with no help. Claimant testified she does use the grocery cart for support. Claimant testified she cleans her home and does dishes, dusting and laundry and she watches television 8 hours per day and listens to the radio. Claimant testified that she can stand for 5 minutes, sit for 1 hour at a time and can walk 1 block. Claimant testified that she can shower and dress herself, tie her shoes, bend at the waist and touch her toes but she cannot squat. Claimant testified that her left knee is weak. Claimant testified that her level of pain on a scale from 1-10 without medication is a 9 and with medication is a 4-5. Claimant testified that she is left handed and that her arms and hands are weak and numb and her legs and feet are fine. Claimant testified that the heaviest weight she can carry is 10 pounds that she does smoke a ½ pack of cigarettes per day and her doctor's told her to quit and she's not in a smoking cessation program. Claimant testified that on a typical day she get's up makes coffee, listens to the radio, watches television, eats, watches more television and does some puzzles but doesn't do much else.

The lumbar x-ray showed minimal degenerative changes (Page 93). The hand x-ray showed mild arthritic changes (Page 94). The physical examination done [REDACTED], reported the claimant had limited range of motion of the shoulder and hips. She had normal grip strength. There were no motor accessory deficits (Page 86-88).

The mental examination noted intact reality with fair insight. Her mental activity was spontaneous. Her affect was restricted and her mood was adutated. She was fully orientated (Page 95-98). In [REDACTED] the claimant had a abnormal EMG of a both upper extremities (Page A32). In [REDACTED] she had a mildly abnormal EMG of the lower extremities showing light L5/S1 root irritation without evidence of lumbar rediculopity or plexopathy or perepheral neuropathy (Page 18). An MRI of the brain dated March 2010, did not show evidence of demyelinating process and there were no acute changes (A25-26). An MRI of the cervical spine dated [REDACTED], showed no evidence of demyelinating process or mass lesion. There were disc herniation at C5-C6-C7 (Page A23, A24). In [REDACTED] she had a normal brain [REDACTED] revoked response and normal vision pattern revoke response (Page A21, A22). In [REDACTED], the claimant was 274 pounds. She was ambulatory without assistance. Her gate was mildly antalgic (Page A38). She had swelling, tenderness and crepitation of the knees. Muscle strength was 5-5 for all groups tested. Muscle tone was normal. Her neurological exam was unremarkable (Page A39). A DHS-49 form completed by the neurologist showed the claimant's examination in October 2010 was normal except for decreased mood and cognitive dysfunction. The claimant's diagnosis included fibromyalgia, bilateral carpo tunnel and depression (Page A1). The clinical impression is that claimant is stable and she could frequently pick up less than 10 pounds and occasionally lift 20 pounds and never lift 25 pounds or more. She could stand or walk at least 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day. She could use both of her upper extremities for simple grasping, reaching and fine manipulating but not pushing and pulling and she could operate foot and leg controls with both feet and legs (Page A1, A2).

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: memory problems 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, 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.

Claimant's testimony and the information indicate that claimant has a history of tobacco. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial

evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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.

/s/

[Redacted signature]

Date Signed: 4/4/11

Date Mailed: 4/4/11

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 text]