

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

IN THE MATTER OF:



Reg. No: 2011-0465
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date:
December 8, 2010
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on December 8, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by L&S Associates.

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) and Retroactive Medical Assistance (Retro MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On December 11, 2009, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability.

- (2) On June 14, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment's lack duration.
- (3) On June 17, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On September 15, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 22, 2010, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information in the form of a complete physical examination and a mental status evaluation by a psychiatrist.
- (6) The hearing was held on December 8, 2010. 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 April 15, 2011.
- (8) On May 2, 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 disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of light 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 light work. Therefore, based upon the claimant's vocational profile of younger individual, 8th grade education and light work history MA-P is denied using Vocational Rule 202.18 as a guide. Retro MA-P was considered in this case and is also denied.
- (9) On May 2, 2011, L&S Associates submitted additional medical information to Administrative Hearings.
- (10) On May 5, 2011, the additional medical information was sent to the State Hearing Review Team for their review.
- (11) On May 18, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: medical records submitted from Dr. Ostein and Dr Keabeney were in the file. The newly submitted evidence is not significantly or materially alters the previous recommended decision. 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 light work. Therefore, based upon the claimant's vocational profile of younger individual, 8th grade education and light work history MA-P is denied using Vocational Rule 202.20 as a guide. Retro MA-P was considered in this case and is also denied.

- (12) On the date of hearing, claimant was a 39-year-old woman whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighed 200 pounds. Claimant was right handed and has a GED. Claimant never received her driver's license.
- (13) Claimant last worked in 2001, as a cashier in a pawn shop.
- (12) Claimant alleges as disabling impairments: a blood infection, kidney stones, resection of the ureter, atrial fibrillation during surgery, 2 ischemic strokes, seizures, bulging disc in the back and asthma.

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 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 2001. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that a January 4, 2011, psychological evaluation indicates that claimant was diagnosed with a cognitive disorder secondary to a stroke, bipolar disorder and a current GAF of 53 and the ability to manage her own funds. Her prognosis is guarded (Page A3, A4). The claimant was oriented to times, place and person. Claimant could recall 7 digits forward and 4 digits backwards. She could recall 3 out of 3 objects after a 3 minute time lapse. She knew her birthday and could correctly name 4 recent past presidents. She exhibited low average capabilities for general fund of information. She could correctly name many large cities, many currently famous people, and 2 current events. She completed serial 7's with one mistake. She exhibited low average to average capabilities for abstract reasoning. She stated that the proverb, "The grass is greener on the other side of the fence meant, "things well get better". She stated that the proverb, "don't cry over spilled milk" meant "don't cry over silly things". Claimant indicated that bush and a tree were alike in that they were both plants. She indicated that they were different in size. Claimant exhibited low average capabilities for social judgment and comprehension. She stated that if she found a stamped, addressed envelop in the street, she would mail it. She stated that if she were the first person in a theater to discover a fire, she would yell fire and tell an attendant. Claimant has a history of stroke in April 2010 (Page A3). A Sparrow Health Center Medical examination dated January 17, 2011, indicates that the claimant was well-developed, well-nourished, white female in no acute distress. She ambulated on her own without difficulty. Her height is 5' 7" her weight is 212 pounds. Her vital signs blood pressure of 120/82, pulse is 80 and regular. Respiratory rate was 16. Her HEENT: normocephalic, atraumatic. Pupils were equal, round and reactive to light and accommodation. Extraocular muscles were in tact. Sclerae were clear. Conjunctivae pink. Fundi within normal limits. Tympanic membranes clear bilaterally. Nasal mucosis is pink without polyps. Pharynx is moist without erythema or exudate. The neck was supple with free range of motion. No thyromegaly, lymphadenopathy or JVD as noted. Carotid upstrokes are good without bruits. Lungs were clear to auscultation. There was normal resonance to percussions. Cardiovascular area had regular rate and rhythm without murmurs. Normal S1 and S2. Normal S3 or S4. No rubs

or thrills are appreciated. The back was some tenderness over the thoracic and lumbar vertebrae. She had normal range of motion. There was no straight leg raise noted and there was no CVA tenderness. In the abdomen she had generalized tenderness without rebound. There were good bowel sounds in all 4 quadrants. No masses or bruits were appreciated. No organomegaly was noted. In the extremities there was no cyanosis, clubbing or edema was noted. Peripheral pulses palpated distally (Page A5). In the musculoskeletal area the patient did have decreased range of motion of the left shoulder with abduction being 50 degrees. External rotation was 70 degrees. Internal rotation was 10 degrees. There was some mild tenderness over the shoulder as well. There was no other evidence of inflammation in the other joints. In the Neurological area the patient was alert and oriented to time, person and place. Cranial nerves 2-12 were grossly intact. Motor exam showed decreased power in the left upper extremity graded at 4+/5 and in the left lower extremity graded at 4/5. Tone was within normal limits. Sensory exam was within normal limits. Deep tendon reflexes are 2+ and equal bilaterally. Cerebellar function was intact. Gait was normal. The assessment was a history of cerebrovascular accident. Probable adhesive capsulitis of the left shoulder some back pain and renal insufficiency (Page A6). This Administrative Law Judge did consider the over 130 pages of medical report contained in the file in making this decision.

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: stroke, 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 *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 39), with a high school education and an unskilled work history or no gainful employment, who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.18.

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 Retroactive Medical 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, and retroactive Medical 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: 6/23/11

Date Mailed: 6/23/11

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.

LYL/ds

cc:

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