

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201224688
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: March 14, 2012
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 March 14, 2012. The claimant personally appeared and provided testimony. The claimant appeared with her authorized representative, [REDACTED] from L&S Associates.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA), retroactive Medical Assistance, and State Disability Assistance (SDA) benefits?

FINDINGS OF FACT

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

1. On August 29, 2011, claimant filed an application for Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefits alleging disability.
2. On November 9, 2011, the Medical Review Team denied claimant's application stating that claimant was capable of performing other work and citing grid rule 202.21 as a reference.
3. On November 17, 2011, the department caseworker sent claimant notice that her application was denied.
4. On January 6, 2012, claimant filed a request for a hearing to contest the department's negative action.

5. On October 14, 2011, the State Hearing Review Team again denied claimant's application stating that the claimant still retains the capacity to perform a wide range of simple, unskilled, sedentary work.
6. After the hearing, the record was left open to allow the claimant to submit new medical evidence. Said evidence was submitted and subsequently forwarded to the State Hearing Review Team. The State Hearing Review Team again denied the claimant's application on May 6, 2012 stating that the claimant retains the capacity to perform a wide range of simple, unskilled, sedentary work.
7. On December 8, 2011, the claimant was admitted to [REDACTED] due to shortness of breath and leg pain. She was noted to have asthma exacerbation with severe wheezing on admission. She was treated with steroids and was treated with antibiotics for pneumonia. She was given a discharge diagnosis which included acute respiratory failure, community-acquired bacterial pneumonia, acute asthma exacerbation, hypertension, bipolar disorder, generalized anxiety disorder, morbid obesity, and left leg pain. She was discharged on December 12, 2011. The claimant was admitted again to Allegiance Health on January 5, 2012. She presented to the ER with complaints of shortness of breath, and was treated with steroid inhalers, IV steroids, and was placed on asthma pathway. She was given a discharge diagnosis which included acute bronchial asthma exacerbation, bipolar disorder, obesity, obstructive sleep apnea, and tobacco abuse. She was discharged on January 8, 2012 and advised to quit smoking and follow up with her primary care physician. (Claimant Exhibit A pages 1-4).
8. The claimant has been seen at the [REDACTED] on several occasions. On August 8, 2011, the claimant was seen for lower back pain. She was also noted to have chronic problems with obstructive sleep apnea, intrinsic asthma, and major depression, recurrent. On June 1, 2011, the claimant was seen for a follow up from a hospital visit, for vomiting, headache, sore throat, and a medication follow up. She was noted to have the same chronic problems mentioned above. The claimant was seen again on September 21, 2011 for a follow up to an ER admittance. The notes indicate that the claimant was admitted to the ER for a drug overdose and then was subsequently to the psychiatric unit. She was also noted to have bronchitis and a UTI. The claimant was noted to have chronic problems with lower back pain, obstructive sleep apnea, major depression, and asthma. (Department Exhibit C pages 1-13).
9. The claimant has also been seen at Intergro, LLC for mental health treatment. The claimant was initially assessed on November 2, 2009 and was seen for an adult diagnostic assessment update on November 9, 2011. The narrative indicates that since her intake, the

claimant has been seen 47 times and has made good progress. It also indicates that the claimant has been hospitalized twice and in the crisis home a couple times due to her bipolar disorder. The notes specifically states that the claimant was at the [REDACTED] crisis home in December 2010 and in [REDACTED] in October 2011. As of the November 9, 2011 diagnostic update, the claimant was given an Axis I diagnosis of bipolar, mixed and was also noted to be suffering from obesity and chronic pain. She was given a GAF of 61 and was recommended to participate in individual therapy 2-3 times per month and participate in medication monitoring as needed. (Department Exhibit C pages 14-27).

10. On May 23, 2011, the claimant was admitted to [REDACTED] after she developed wheezing, bilateral ear pain, a severe headache, and nausea with vomiting. The claimant's social history was noted to be positive for ongoing tobacco abuse. The claimant was admitted and administered pain medications and antibiotics. The claimant was also administered a bronchodilator nebulizer for treatment of her bronchial asthma. At discharge, the claimant was given a primary diagnosis of moderate ethmoid sinusitis and upper respiratory infection, systemic inflammatory response (secondary to the previous diagnosis listed), acute chronic headache, and acute respiratory failure at admission secondary to upper respiratory infection and sinusitis. The claimant was discharged May 26, 2012. (Department Exhibit A pages 33-42).
11. On August 14, 2011, the claimant was admitted to Allegiance Health. The claimant was admitted following a suicidal attempt due to taking Ultram. The narrative states that the claimant had taken an overdose of Ultram for the preceding two days in an attempt to commit suicide. She underwent a psychiatric consultation and was diagnosed with bipolar affective disorder, depressed, and given a GAF of 30. The claimant was discharged on August 15, 2011 and given a discharge diagnosis of depression with suicide attempt, obesity, and obstructive sleep apnea. (Department Exhibit A pages 43-60).
12. The claimant was admitted to [REDACTED] [REDACTED] again on January 24, 2012 as she was feeling overwhelmed, depressed, and was planning to overdose. She was given an admitting Axis I diagnosis of bipolar disorder, with depressive episode, with resolving psychosis and resolving suicidal ideations and generalized anxiety disorder. She was assigned a GAF of 30. It was noted that the patient's mood was monitored throughout her stay and improved. The claimant was given an Axis I discharge diagnosis of bipolar disorder with complete resolution of suicidal ideations and psychosis and generalized anxiety disorder. She was assigned a GAF of 45 upon discharge. (Department Exhibit C pages 28-36).

13. On February 23, 2012, the claimant underwent a mental status exam conducted by [REDACTED]. After the examination, the claimant was diagnosed with a history of major depressive episodes with mood-congruent psychosis (in remission), current dysthymia, history of very low self esteem, anxiety disorder NOS, and temper dysregulation. This was thought to be a chronic condition and the claimant was assigned a GAF of 54. (Department Exhibit C pages 37-40).
14. Claimant is a 29 year-old woman, date of birth [REDACTED]. She stands 5'7" tall and weighs 374 lbs. She completed high school and received a diploma. Subsequently, the claimant attended Baker College where she received an Associates Degree and a certificate as a medical assistant. She has no additional formal education or training. She formerly worked as a cashier at a party store and as a dietary aide. Past relevant work history appears to be light to medium and unskilled. The claimant is not currently working and has not worked since July 2011.
15. The claimant stated that she had filed an application for Social Security Disability benefits but that she had not received a determination.

CONCLUSIONS OF LAW

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).

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 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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" and that said impairment(s) have met the duration requirement (20 CFR 404.1520(c) and 416.920(a)(2)(ii) and (c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). In order for an impairment(s) to meet the duration requirement, the impairment(s) must have lasted or be expected to last for at least 12 months, unless the impairment(s) is expected to result in death (20 CFR 416.909). If the claimant does not have a severe medically determinable impairment or combination of impairments that have met the duration requirement,

he/she is not disabled. If the claimant has a severe impairment or combination of impairments that have met the duration requirement, the analysis proceeds to the third step.

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). 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).

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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do

any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

In determining how a severe mental impairment affects the client's ability to work, four areas considered to be essential to work are looked at:

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

..Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your

ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d).

If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do any basic work activities. 20 CFR 416.920a(d)(1).

If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the diagnostic medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. 20 CFR 416.920a(d)(2).

If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity. 20 CFR 416.920a(d)(3).

At Step 1, claimant is not currently working and has not worked since July 2011. The claimant is not precluded from a finding of disability at Step 1. The Administrative law Judge will then proceed with the sequential evaluation.

At Step 2, the claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms and has met the durational requirement. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been

shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

This Administrative Law Judge finds that the objective medical evidence of record does support the claimant's contention that she is suffering from a severe physical impairment that has lasted or is expected to last for at least 12 months. Additionally, the Administrative Law Judge does find that the objective medical evidence supports the contention that the claimant is suffering from a severe mental impairment that has lasted for 12 months. The objective medical evidence of record shows claimant's impairments do meet the *de minimus* level of severity and duration required for further analysis. The claimant is therefore not precluded from a finding of disability at Step 2. The Administrative Law Judge will then proceed with the sequential evaluation.

The analysis then proceeds to Step 3. The Administrative Law Judge does not find that the claimant's impairments, standing alone or in combination, meet one of the specifically listed impairments. In reaching this conclusion, the Administrative Law Judge specifically examined the listings contained at 3.03(B) and 12.04 (A)(1). At the hearing, the claimant's authorized representative argued that the claimant meets or equals those cited listings.

In relation to 12.04 (a)(1), the objective medical evidence does not support the contention that the claimant's impairment meets the required severity level for said impairment. The objective medical evidence does not show that the claimant's impairment is characterized by four of the listed factors {12.04 (A)(1) (a through i)}, nor does the objective medical evidence show that the claimant's impairment results in marked restrictions in activities of daily living, maintaining social functioning, maintaining concentration, persistence, or pace, or that said impairment has resulted in repeated episodes of decompensation each for extended duration.

In relation to 3.03(B), the claimant's impairments do come close to meeting this listing. The claimant was hospitalized for more than a 24 hour period on three occasions in the last year; specifically May 23, 2011, December 8, 2011, and January 5, 2012. Each of these hospitalizations was at least partially related to the claimant's respiratory problems and the claimant was admitted for at least a 24 hour period. However, the objective medical evidence does not show that the claimant was adhering to a prescribed regiment of treatment as required by 3.00(C). In fact, the objective medical evidence tends to show that the claimant had not been adhering to prescribed treatment. The claimant testified that she smokes less than a half pack of cigarettes per day. Her medical records also show that she was a smoker during the times of her hospitalizations. She was advised after her January 2012 hospitalization to quit smoking but has yet to do so. The claimant has not followed medical advice in quitting smoking, which obviously directly correlates to respiratory problems. Accordingly, in the

absence of medical documentation showing that the claimant is adhering to her prescribed medical regimen, the Administrative Law Judge does not find that the objective medical evidence supports the assertion that the claimant's impairments meet the requirements of the listing contained at 3.03(B).

The objective medical evidence of record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, it must be determined whether or not claimant has the ability to perform her past relevant work. The claimant has a history of light to medium unskilled work. The objective medical evidence shows that the claimant does have physical limitations with respect to her asthma and back pain. The objective medical evidence does support the contention that the claimant would not be able to perform work at the light or medium exertional levels. However, the objective medical evidence shows that the claimant would retain the physical residual functional capacity to perform sedentary work.

With respect to the claimant's mental residual functional capacity, the objective medical evidence of record shows that the claimant retains the mental residual functional capacity to perform simple and repetitive tasks, and therefore unskilled work. On February 23, 2012, the claimant underwent a mental status examination conducted by [REDACTED]. The results of this examination showed that [REDACTED] was of the opinion that the claimant's ability to relate to others was essentially intact, although "there may be problems of a mild to moderate nature as major (and chronic) feelings of insecurity and inadequacy are stimulated by situations" (see Department Exhibit C page 40). The doctor further opined that the claimant's abilities to understand, remember, and carry out familiar or customary tasks and her ability to focus and sustain attention to relevant and customary occupational tasks were intact. [REDACTED] did note that the claimant's ability to withstand or otherwise cope with the stresses of ordinary or customary occupational activity was fragile. The claimant was assessed with a GAF of 54. [REDACTED] opinion is consistent with the great weight of objective medical evidence contained in the record. Accordingly, although the claimant clearly has limitations with respect to her mental residual functional capacity, the objective medical evidence shows that she still retains the mental residual functional capacity to perform unskilled work.

In summation, the objective medical evidence of record shows that the claimant maintains the residual functional capacity to perform sedentary unskilled work. Accordingly, the claimant would be precluded from performing her past relevant work at the medium and light level. The claimant is therefore not precluded from a finding of disability at Step 4. The Administrative Law Judge will then proceed with the sequential evaluation process.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy.

This Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity (see analysis at Step 4). The claimant is disqualified from receiving disability at Step 5 as the objective medical evidence shows that she can perform sedentary unskilled work even with her impairments. Therefore, the medical evidence of record establishes that the claimant retains the physical and mental residual functional capacity to perform sedentary unskilled work. A finding of disability is therefore precluded at Step 5.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a younger individual (age 29) with a high school education and an unskilled work history who is capable of sedentary work is not considered disabled pursuant to Vocational Rule 201.27.

The claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which results in the inability to engage in any substantial gainful activity. Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges 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.

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.

Accordingly, the department's decision is **AFFIRMED**.

/s/_____

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 6, 2012

Date Mailed: June 7, 2012

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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