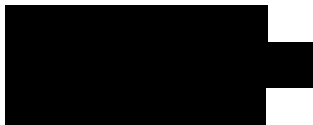


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**



Reg. No: 201260148  
Issue No: 2009/4031  
Case No: [REDACTED]  
Hearing Date: October 10, 2012  
Genesee County DHS (District #2)

**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 October 10, 2012. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] of [REDACTED].

**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 February 6, 2012, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
2. On April 17, 2012, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.
3. On April 20, 2012, the department case worker sent claimant notice that her application was denied.
4. On June 15, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On August 1, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant reportedly had a history of congenital genitourinary abnormalities and had a history of multiple surgeries involving her GU system over the years. She was admitted in January 2012 with significant infection. Her creatinine was 1.3 on admission but came down to 0.6. Her condition improved significantly with antibiotics and a right nephrostomy tube. In March 2012 the claimant reported having seizures after stopping her medications. The doctor opined that the seizures were probably secondary to medication withdrawal. In May 2012 the claimant was drowsy, incoherent and lethargic at her consultative examinations. She reportedly was on high doses of methadone and Vicodin for her pain. Her unsteady gait appeared to be related to her reportedly high dose of medication. There was no motor deficit and no muscle wasting noted. The claimant is not currently engaging in substantial gainful activity (SGA) based on the information that is available in the file. 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 at least simple, unskilled, sedentary work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical-vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity (RFC). Therefore, based on the claimant's vocational profile (younger individual, limited education and history of semi-skilled work), MA-P is denied using Vocational Rule 201.25 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because of the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

6. The hearing was held on October 10, 2012. 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 November 13, 2012.
8. On December 17, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant has a history of congenital genitourinary abnormalities and had a history of multiple surgeries involving her GU system over the years. She was admitted in January 2012 with significant infection. Her creatinine was 1.3 on admission but came down to 0.6. Her condition improved significantly with antibiotics and a right nephrostomy tube. In March 2012, the claimant reported having seizures after stopping her medications. The doctor opined that the seizures were probably secondary to medication withdrawal. In May 2012, the claimant was drowsy, incoherent and lethargic at her consultative examinations. She reportedly was on high doses of methadone and Vicodin for her pain. Her unsteady gait appeared to be related to her reportedly high dose of medication. There was no motor deficit and no muscle wasting noted. In June 2012, claimant fell from her roof while intoxicated and suffered a lumbar fracture. The fracture is expected to resolve. Claimant's creatinine was 0.61. Her kidney function is stable. She retains the capacity to perform light, unskilled work. The claimant is not currently engaged in substantial gainful activity (SGA) based on the information that is available in the file. 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, unskilled work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical-vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity (RFC). Therefore, based on the claimant's vocational profile, MA-P is denied using Vocational Rule 202.17 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.

9. On the date of hearing claimant was a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5' 1" tall and weighs 105 pounds. Claimant attended the 12<sup>th</sup> grade and does not have a GED. Claimant is able to read and write but has some problems with comprehension and does not have basic math skills.
10. Claimant last worked in 2009 as a waitress. Claimant has also worked as a housekeeper at a hospital and as a nurse's aide.

11. Claimant alleges as disabling impairments: anxiety, diabetes mellitus, kidney problems, seizures, depression and a fractured back.

### **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 is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she is homeless and lives with a friend and that she is single and has no children under 18. Claimant testified she has no income. Claimant does not receive Food Assistance Program benefits. Claimant does not have a driver's license and her friend takes her to where she needs to go. Claimant testified she cooks one time per day and fixes things like meatloaf and she shops one time per month and she needs help with lifting the groceries. Claimant testified she picks up her clothes and does dishes and laundry and watches television all day long and she is learning to use a computer. Claimant testified that she can stand for five minutes and can sit for 15 minutes at a time. She can walk a block but cannot squat or touch her toes. She can bend at the waist a little bit and she can shower and dress herself and tie her shoes if she brings her foot up. Claimant testified that her back is fine but it hurts and her knees are fine. Claimant testified that her level of pain on a scale from one to ten without medication is ten and with medication is a four to five. The claimant testified that she is right-handed and that her hands and arms are fine, her feet are fine and the heaviest weight she can carry is a gallon of milk. Claimant testified she does smoke a pack and a half of cigarettes per day. The doctor has told her to quit and she is not in a smoking cessation program. Claimant testified that she does not drink and that she stopped smoking marijuana approximately a month and a half before the hearing. Claimant testified that on a typical day she gets up and eats, takes her medication if she has it and then she gets a shower, dresses and watches television all day and talks to her daughter on the phone.

In June 2012 claimant was admitted to the hospital. She fell off her roof and sustained an L1 fracture. She was treated for alcohol abuse, lumbar fracture, and urinary tract infection. She was discharged home with a walker. Her creatinine was 0.6. Neurological and motor functions were intact (pages 77 and 78). In August 2012 claimant had a lumbar spine x-ray (page 75). It showed an old fracture and postsurgical changes at T12-L1; otherwise unremarkable. A January 2012 hospital admission (pages 59 and 61) shows progressive dysuria, urgency, frequency, flank pain and gross hematuria. She reportedly had a history of congenital genitourinary (GU) abnormalities and had a history of multiple surgeries involving her GU system over the years, apparently primarily in her childhood. She reportedly had a diverting urostomy for some time, which was subsequently taken down. Her creatinine was 1.3 on admission but came down to 0.6. She had bilateral hydronephrosis with air-fluid levels and infected systems. She improved significantly with antibiotics and a right nephrostomy tube. March 2012 [REDACTED] (DDS records) indicates that claimant was seen for

possible seizures. She reported 2 to 3 seizures lasting 12 minutes. The episode was witnessed at the methadone clinic. Seizures continued in the emergency department but the claimant left against medical advice (AMA). The claimant had been off her medicines for nearly 1.5 weeks. She reported constant back pain. She reported that she had not taken her medications, including methadone because she left them at her father's place up north. She was noted to have a history of substance abuse. On examination, she had a nephrostomy tube in situ on the right side with the bag. She had minimal tenderness around the bag site. She had normal range of motion. Her mood and affect were normal. Impression was kidney problems with hydronephrosis status post nephrostomy tube, history of seizures probably secondary to medication withdrawal, diabetes, bipolar, hypertension and history of previous drug abuse.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, anxiety and bipolar disorder.

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 41) with less than a high school education and unskilled work history of light work is not considered disabled pursuant to Medical Vocational Rule 202.17.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that claimant has a history of tobacco and alcohol abuse. 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



**NOTICE:** Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the receipt date of this Decision and Order. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

LYL/db

cc:

