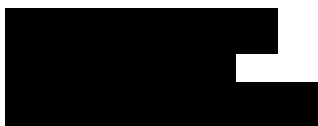


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2012-66822
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 25, 2012
Newaygo 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, a telephone hearing was held on October 25, 2012. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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 May 17, 2012 claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On July 11, 2012, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
3. On July 16, 2012, the department case worker sent claimant notice that her application was denied.
4. On July 21, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On September 7, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the x-ray of the lumbar showed no fracture of the sacrum. She had normal motor strength and intact sensation of the lower extremities. The diabetes is being treated with medication. As a result of the claimant combination of

severe physical condition, she is capable of returning to past work as a cook. Claimant is not engaging in substantial gainful activity at this time. Claimant's severe impairments do not meet or equal any listing. Despite the impairments, she retains the capacity to perform past work as a cook. Therefore, based on the claimant's vocational profile (younger individual, 11th grade education, and light work history); MA-P is denied using Vocational Rule 202.18 as a guide. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform past work as a cook.

6. The hearing was held on October 25, 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 29, 2012.
8. On January 23, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence of record indicates that the claimant reasonably retains the ability to perform sedentary exertional tasks. The evidence does not support the presence of severe psychiatric limitations. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform sedentary exertional tasks. The evidence does not support the presence of severe psychiatric limitations. The claimant's past work was as a secretary, 201.362-030, 6S. Therefore, the claimant retains the capacity to perform their past relevant work. MA-P is denied per 20 CFR 416.920 (e&f). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant but would have been denied per BEM 261 due to the capacity to perform past relevant work. Listings 1.04, 4.12, 8.04, 9.00.B5, 11.14 12.04/06 and 13.00 were considered in this determination.
9. On the date of hearing claimant was a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 193 pounds. Claimant attended the 11th grade and does not have a GED. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked as a cook at [REDACTED]. Claimant has also worked in a car parts factory and in fast food restaurants.
11. Claimant alleges as disabling impairments: panic disorder, anxiety, depression, fibromyalgia, fractured sacrum, peripheral vascular disease

(PVD), diabetes mellitus, neuropathy, methicillin-resistant *Staphylococcus aureus* (MRSA) and fibromas.

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 is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates claimant testified on the record that she lives in a house with others, a friend supports her and she is single with no children under 18. Claimant has no income and does receive Food Assistance Program benefits. Claimant does have a driver's license and drives one time per month to doctor's appointments. Claimant does microwave foods and she watches television 3 hours per day. Claimant testified she can stand for 15 minutes at a time, sit for 15-20 minutes at a time and can walk 1 block. Claimant testified that she cannot squat, tie her shoes or touch her toes, she is a fall risk in the shower and she cannot bend at the waist very well. Claimant testified her knees are fine. Claimant testified that her level of pain, on a scale of 1-10, without medication is an 8, and with medication is a 3. Claimant testified that she is right handed and that she does have shoulder problems and neuropathy and fibromas in the feet. Claimant testified the heaviest weight she can carry is 5 lbs. Claimant quit smoking one month before the hearing and she used to smoke a pack of cigarettes a day.

A physical examination dated October 16, 2012 indicates that on physical examination temperature 37.3 orally, heart rate 88, respiratory rate 18, blood pressure 130/68, oxygen saturation 92% on room air. A subsequent recheck was done and patient was 98% on room air. Weight was 92.3 kg. The skin was warm and dry, except at the perineum where there is an excoriated and indurated rash that extends from the mid left gluteus to the right gluteus with a deep incision that is currently packed. There is no sanguinous drainage. However, there is serous drainage and mild edema. It is also noted patient has genital warts. Patient exhibits no lymphadenopathy of the anterior, cervical, submandibular or supraclavicular areas. Similarly, the femoral area has no palpable lymphadenopathy. The head is normocephalic and atraumatic. The pupils in the eyes were equal, round and reactive to light and accommodation. Hearing is grossly intact. The nose was patent with no discharge. The throat was pink and moist without exudate or lesions. The neck was supple, non tender, without jugular venous distention or bruits. The chest breath sounds were clear to auscultation bilaterally. In the heart, cardiac rate and rhythm is regular without murmurs, rubs or gallops. The abdomen was obese, soft, nondistended, non tender. Positive bowel sounds. Patient moves all extremities and exhibits no dependent edema. The musculoskeletal area had strength equal bilaterally. Capillary refill is greater than 3 seconds in the peripheral area. Dorsalis pedis pulses are 1+ bilaterally. Neurologically the patient was alert and oriented times 3. She is appropriate, and she exhibits no focal neurological deficits at that time (p 154). Claimant was diagnosed with perineal cellulitis and uncontrolled diabetes mellitus type 2. Claimant has a history of a fall on January 31, 2012 sustaining a fractured sacrum. An x-ray of the lumbar spine on August 17, 2012 showed a non displaced distal sacrococcygeal fracture (DDS medical records). The physical examination on May 9, 2012 reported her motor strength was normal and intact sensation of the lower

extremities (p 25). The diabetes is treated with medications with no signs of congestive heart failure. She has a history of MRSA in December, 2009 from an infection of the right foot. There are no current reports of MRSA in file (p 44). An August 25, 2012 report (p136), indicates that an MRI: T11-12 disc space narrowed, dessication and mild annular bulge; L3-4 minimal annular bulge; L4-5 disc height minimally narrowed, dessication and moderate circumferential annular bulge with mild central protrusion.

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 panic attacks.

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

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/las

cc:

