

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-68818
2012-730
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 28, 2012
Genesee-06 County DHS #6

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECONSIDERATION 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 February 28, 2012. Claimant was represented at the administrative hearing by [REDACTED]. Claimant personally appeared and testified.

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 January 13, 2011, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On April 15, 2011, the Medical Review Team denied claimant's application stating that claimant's impairment's do not meet duration.
3. On June 21, 2011, the department caseworker sent claimant notice that her application was denied.
4. On September 19, 2011, claimant filed a request for a hearing to contest the department's negative action.
5. On November 18, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: Per 20 CFR 416.909, the claimant's condition is not expected to last for a continuous period of 12 months; or, the claimant's impairments is

expected to improve post operatively. 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 past work as a cashier.

Therefore, based on the claimant's vocational profile (younger individual, 12th grade education and medium work history); MA-P is denied using Vocational Rule 203.29 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on February 28, 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 April 25, 2012.
8. On June 18, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The medical evidence in file does not support a finding that her condition will last for a continuous period of 12 months. The medical and tests submitted show the claimant is improving (4.00 listings evaluated). 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 her past work as a cashier.

Therefore, based on the claimant's vocational profile, MA-P is denied using Vocational Rule 203.29 as a guide. Retroactive MA-P was considered in this case and is also denied.

9. On the date of hearing claimant was a 46-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 180 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills. Claimant was also a Certified Nurses Assistant (CNA), but her certification is expired.
10. Claimant last worked December 12, 2010 as a direct care worker. Claimant was receiving unemployment compensation benefits from November, 2007 through 2010. Claimant has also worked as a residential worker for mentally challenged persons, as a cashier, stocking, clerk and as a Hospice support person.
11. Claimant alleges as disabling impairments: acute coronary syndrome, neck arthritis, carpal tunnel syndrome, stent placement, myocardial infarction, broken back, seizures, chronic pain, weak arms, shortness of breath, injured right leg, hip surgery January, 2012, a weak right side, back pain, hypertension, multiple sclerosis, a fractured back/neck, frustration and memory issues.

12. On July 11, 2012, Administrative Law Judge Landis Y. Lain issued a decision affirming the department's decision to deny claimant's application.
13. On August 6, 2012, claimant's representative filed a request for reconsideration.
14. On January 18, 2012, Administrative Law Manager Marya Nelson-Davis granted claimant's motion for reconsideration.

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.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

Rehearing/ Reconsideration Requests

All Programs

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

A written request made by the AHR or, if none, by the client, must be faxed to:

- (517) 335-6088- Attention: SOAHR Client Requested Rehearing/Reconsideration
- SOAHR (now MAHS) will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR (MAHS).
- Client or authorized hearing representative request -- received anywhere in DHS.

Granting A Rehearing/ Reconsideration

All Programs

SOAHR (MAHS) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

All Programs

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR, the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BEM, Item 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 2010. Claimant is not disqualified from receiving disability at Step 1.

Upon reconsideration, the subjective and objective medical evidence on the record indicates that the claimant testified on the record that she lives with a roommate at a house and that she is married, but separated. Claimant has no children under the age of 18 that live with her and no income. She does not receive any benefits from the Department of Human Services. Claimant does have a driver's license, but does not drive. She stated that her sister takes her where she needs to go. Claimant testified that she cooks 2 to 3 times per week and cooks things like chicken, rice, noodles, sandwiches and vegetables. She stated that she goes to grocery shops once per month and that she needs help with a ride. Claimant stated that she uses the amigo cart while shopping and needs help to carry her groceries. Claimant testified that she can vacuum and do laundry. She stated that she used to be able to horseback ride, travel and shop, but now she only watches television 5 hours per day. Claimant testified that she can stand for 5 minutes at a time and can sit for 1 hour at a time. She is able to walk around the house. Claimant testified that she cannot squat, tie her shoes, touch her toes or bend at the waist, stating she gets dizzy. She stated that she can shower and dress herself, but it is very difficult. She stated she cannot get her arms above her head and that her sister usually washes her hair. Claimant testified that she is right handed and she has two paralyzed fingers on her hands. She stated that she has carpal tunnel syndrome. Claimant stated that her legs/legs hurt, swell and need to be elevated. The heaviest weight claimant can carry is a puppy, which is approximately 15 pounds and it causes pain. Claimant testified that she doesn't smoke, drink alcohol or take any drugs besides her medication. She stated that on a typical day she gets up and uses the restroom, puts the dog on a leash, feeds the dog, eats, sits down a lot, reclines in the living room, she takes phone calls, showers and goes back to bed if she's had a bad day. She takes 2 to 3 naps during the day and uses a walker. Claimant testified that she has depression, frustration and that she cries due to not being able to do things. She also has nerve damage in her arms from multiple sclerosis.

A January, 2012 orthopedic exam submitted with a diagnosis of soft tissue crush injury right proximal thigh with seroma formation. The doctor stated this is something that may resolve on its own. The doctor did suggest that claimant could have surgical intervention with evacuation of the fluid hematoma (Pgs. B1-2). The hospital admission, January 18-21, 2012 for the excision of the mass is in file. The claimant did have the procedure done and when she returned for follow up in January and February, she once again had fluid build up. The doctor did a repeat drainage of the fluid in his office. A September, 2011 report from treating doctor for neck and back pain (Pgs. 41-43). December, 2011 x-ray of pelvis results show no evidence of fracture and mild degenerative changes of the lumbar spine (Pg. 14). December, 2011 x-ray of the right femur shows no definite fracture or dislocation (Pg. 13). November testing results shows no acute cardiopulmonary disease; normal ultrasound of the gallbladder; normal stress test (Pgs. 8-12).

The claimant has a history of myocardial infarction in December, 2010 with two stent placement. In January, 2011 her lungs were clear and heart within normal limits. There was no edema of the extremities (Pg. 12). In December, 2010 she had a full range of motion of all joints (Pg. 18). Medical Source opinion states that claimant can lift and carry 10 pounds occasionally and frequently carry less than 10 pounds.(D-1) She can stand and walk less than 2 hours in an 8 hour day but can sit less than 6 hours in a 8 hour work day with a stand/sit option. She can use her upper extremities for unlimited gross manipulation, fingering and feeling. (D-2)

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: memory problems and depression.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 46), with a high school education and an unskilled work history who is limited to light work or sedentary is not considered disabled pursuant to Medical Vocational Rule 201.20 or 202.20. Claimant is not considered disabled at step 2, 3, 4 or 5.

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.

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**.

Landis

/s/

Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 26, 2013

Date Mailed: February 27, 2013

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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