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

IN THE MATTER OF:

[redacted]

Reg. No: 2012-68048
Issue No: 2009;4031
[redacted] [redacted]
Hearing Date: November 20, 2012
Wayne-18 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 November 20, 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) 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 January 30, 2012, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

2. On July 12, 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 26, 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 recommendation: the claimant reported being depressed but does not indicate any history of psychiatric hospitalization or treatment. She reported limitations in her

activities due to pain. However, she is able to perform basic activities of daily living. On examination, she had decreased range of motion of the spine, left shoulder, hips and knees. Her gait was normal. She had good grip and dexterity was intact. There were no significant neurologic al abnormalities noted. The claimant is not currently engaging in s ubstantial gainful activity based on the informati on that is available in file. The claimant's impairments do not meet/equal t he intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity t o perform a wide range of unsk illed, light 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 dire ct a finding of not disabled given the claimant's age, education and resi dual functional capacity. Therefore, based on t he claimant's vocation al profile (y ounger individual, 12 th grade education and history of unskilled/semi skilled work), MA-P is denied using Vocational Rule 202.20 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 48-year-old woman whose birth date is [redacted] Claim ant is 5'5.5" tall and weighs 170 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills. Claimant also has a cosmetology degree.

10. Claimant last worked November , 2010 as a cook. Claimant has als o worked for [redacted] and [redacted]

11. Claimant alleges as disabling impairments: depression, hip and back pain, leg pain, locking s houlder and limit ed range of motion in her neck and arms.

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 oppor tunity for a hearing shall be granted to an ap plicant wh o requests a hearing because his or her clai m for assistance has been denied. MAC R 400.903(1). Clients h ave the right to contes t a department decision affecting elig ibility or benefit levels whenev er it is believ ed that the decis ion is incorrect. The department will provide an adm inistrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability A ssistance (SDA) progr am which pr ovides financial ass istance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) administe rs 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 has not worked since November, 2010. Claimant 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 lives with an older man and he pays the rent. She is single with no children under 18 who live with her. Claimant has no income and does receive Food Assistance Program benefits. Claimant does have a driver's license and

drives every two weeks approximately 10 miles to her appointments. Claimant testified that she does cook daily, things like grilled cheese, soup and hot dogs. Claimant does grocery shop every two weeks with no help. Claimant testified that she makes the bed and does the dishes and that she watches television 6 hours per day. Claimant testified that she can stand for 5-10 minutes at a time and sit for 5-10 minutes at a time. Claimant testified she can walk inside the grocery store and that she cannot squat or touch her toes. Claimant testified that she can bend a ¼ motion forward, she can shower and dress herself and she can tie her shoes if she puts her foot up. Claimant testified that 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 5. Claimant testified that she is right handed and that her arms /hands are fine and that she has pain in her legs . Claimant testified that the heaviest weight she can carry is 10 lbs and that she does smoke one cigarette per day. Claimant testified that on a typical day she makes the bed, gets dressed, brushes teeth and hair, watches television, has coffee, naps for 2 hours, watches the news, checks the mail.

On June 13, 2012, the claimant was 5'5" tall and 198 lbs. She had good handgrip bilaterally and dexterity was intact. Her gait was normal. She had decreased range of motion of the cervical spine, lumbar spine, left shoulder, bilateral hips and bilateral knees (p 10). There were no motor or sensory deficits noted (p 11). The claimant reported she prepares her own meals and does dishes and laundry for herself and the homeowner. She reported some limitations due to her pain (p 39-43). A June 13, 2012 medical examination report indicates that claimant's blood pressure was 100/72, pulse 68, respiration 16, vision 20/20 on the right and 20/20 on the left without glasses. The patient is right handed. The skin revealed no abnormalities. The HEENT was normocephalic. Eyes PERRLA. Extraocular movements are normal. Nose and ears unremarkable. The mouth is unremarkable. Thyroid is not enlarged. Trachea is in the midline. The chest was thick. The heart had regular rate and rhythm with no S3. The lungs were clear to auscultation and percussion. There were no crackles. The abdomen is protuberant. In the extremities/musculoskeletal area there is no clubbing or cyanosis. Peripheral pulses are intact. No edema noted. There are superficial varicosities. The patient has good handgrip bilaterally. Digital dexterity is intact. The patient managed to get on and off the examination table without difficulty. The patient's gait is normal. The patient is able to do tandem , tiptoe and heel walking without problem. The patient is able to bend and stoop. She was able to squat and recover. Range of motion of the cervical spine is decreased. Lumbar spine range of motion is decreased. Shoulder range of motion is decreased on the left. Hip range of motion is decreased bilaterally. Range of motion of the knees is decreased. The impression was chronic neck pain secondary to degenerative disc disease with the range of motion of the cervical spine decreased. In the neurologic al area the patient was alert, oriented and cooperative. There was no focal localizing signs. Cranial nerves were intact. No motor or sensory deficits noted (p 10-11).

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 clinic al findings that suppor t the reports of symptoms and limitations made by the claimant. There are no labor atory or x-ray findings listed in the file whic h support claimant's contention of disability. The clinical impre ssion is that claimant is stable. There is no m edical finding that claim ant has any muscle at rophy or trauma, abnormality or injury that is c onsistent with a deteriorating c ondition. In short, claimant has restricted herself from tasks associ ated with occupational functioning based upo n her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has me t the evidentiary burden of proof can be made. This Admini strative Law Judge finds t hat the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions of activities of daily living, social functioning; c oncentration, persistence, or pace; and ability to tolerat e increased mental demands associated wit h com petitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric e vidence in the record indicating claimant s uffers severe mental limitations . There is no ment al residual functional capacity assessment in the record. There is in sufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it w ould prevent claimant from working at any job. Claimant was or iented to time, person and plac e during the hearing. Claimant was able to answer all of the questi ons at the hearing and was responsive to the questions. The evidentiar y reco rd is insufficient to find that claimant suffers a severely restrictive mental impair ment. 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 bas ed upon her failure t o meet the evidentiary burden.

If claimant had not been denied at Step 2, t he analysis would proceed to Step 3 where the medical evidence of claimant 's condition does not give rise to a finding that sh e 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 u pon her ability to perform her past relevant work. There is no ev idence upon which this Administrative Law Judge c ould 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 48), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

The department's Program 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 either.

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. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

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

/s/

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

Date Signed: January 2, 2013

Date Mailed: January 2, 2013

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: [redacted]