

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

IN THE MATTER OF:



Reg. No: 2013-2105
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 25, 2012
Ingham County DHS

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, a telephone hearing was held on April 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 August 30, 2011, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On January 20, 2012, the Medical Review Team denied claimant's application stating that claimant could perform prior work in the form of office work.
3. On January 24, 2012, the department caseworker sent claimant notice that her application was denied.
4. On February 3, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On March 26, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant is obese and does have some mobility issues. She has alleged depression and anxiety; however, she is not seeing a mental health

professional, additionally she is noted to be alert and oriented. Physically, she appears to be limited to sedentary work. Mentally, there does not appear to be any significant limitations. She retains the capacity to perform her past work as it is normally performed in the national economy. The claimant retains the physical residual functional capacity to perform a wide range of sedentary work. The claimant's past work in office work is sedentary as it is normally performed. MA-P is denied per 20 CFR 4163.920(e). Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on April 25, 2012. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. Additional medical information was not submitted by August 20, 2012. Therefore, this ALJ closed the record and proceeded to make a decision based upon the information contained in the record.
8. On the date of hearing claimant was a 60-year-old woman whose birth date is [REDACTED]. Claimant is 5'10 1/2" tall and weighs 390 pounds. Claimant has an Associates' Degree in Applied Sciences. Claimant is able to read and write and does have basic math skills.
9. Claimant last worked in 2001 as a transcriptionist doing medical transcripts. Claimant has also worked as a paramedic and in an office maintaining pace makers.
10. Claimant alleges as disabling impairments: Obesity, arthritis, depression, anxiety, endometrial hyperplasia, left knee problems and hypertension.
11. On September 10, 2012, Administrative Law judge Lain issued a Decision and Order Affirming the department decision to deny claimant's application for Medical Assistance and retroactive Medical Assistance based upon disability.
12. On October 4, 2012, claimant filed a request for a rehearing/reconsideration stating that she provided additional medical information to the department in support of her claim.
13. On October 30, 2012, Supervising Administrative Law Judge Kathleen Svoboda issued an Order granting the Request for Reconsideration.
14. On November 1, 2012, the additional information was sent to the State Hearing Review Team for further review.
15. On December 28, 2012, the State Hearing Review Team again denied claimant's application stating in the analysis and recommendation: The

newly provided treating source opinion is in contradiction to the previously provided treating source report. While the newly provided evidence does support that the claimant has a medically determinable psychiatric condition, this evidence does not change the prior determinations, including the DHS/ALJ decision that there are no significant psychiatric limitations. The evidence further supports that the claimant would reasonably retain the ability to perform sedentary exertional tasks. 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 (SSA) 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: clerical, 203.362-010, 4S. 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 1.02, 12.04, 12.06, 13.03, 13.23 were considered in this determination.

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, MAHS, 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 is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that the claimant testified on the record that her husband supports her. She states she lives with her husband and disabled daughter. Claimant has no children under 18 that live with her and has no income. She does receive the Adult Medical Program. She stated that she has a driver's license and drives once daily - 30 miles round trip. Claimant testified that she cooks 3 to 4 times per week and cooks full meals. She does grocery shop one time

per week and uses the amigo cart. Claimant testified that she cleans the bathroom and dusts. She states for a hobby, she does needlepoint and reads. Claimant testified that she can stand for less than 5 minutes at a time and can sit 10 to 20 minutes at a time. She can walk 20 to 30 feet and she uses a shower chair, but is able to shower and dress herself. Claimant testified that she cannot squat or touch her toes, but she can tie her shoes and bend at the waist. She stated that her knees hurt and her back is fine. Claimant testified that her level of pain on a scale of 1 to 10 without medication is an 8 and with medication is a 5. She stated that she is right handed and that her hands and arms are fine and her legs and feet are fine. Claimant testified that the heaviest weight she can carry is one gallon of milk. She also uses a cane prescribed by her doctor. Claimant testified that she does not smoke, consume alcohol or use any drugs. Claimant stated on a typical day she gets up, gets dressed, makes breakfast, checks her appointments, gets on the computer, has lunch, makes dinner and then goes to bed. Claimant testified that she could do some work from home.

A medical examination report contained in the file indicates that she has extreme obesity. Endometrial hyperplasia and that she is 5'10 ½" tall and weighs 383 pounds. Her blood pressure was 128/86 and she was right hand dominant. She had 20/20 visual acuity best corrected in both eyes at her last examination of October 4, 2011. The clinical impression was that she was stable and she had no neurological impairments and no back impairments. Her gait was slow and unsteady at times due to extreme obesity and knee instability and pain. In her abdominal area, she had no obvious masses, no tenderness and protuberant. She had no carotid bruit and her heart sounds were normal. There were no murmurs in the cardiovascular area. In the respiratory area, her lungs were clear. Her HEENT was PERLA, TM's were clear and hearing was intact (Pgs. 8-9).

A November 2, 2011 medical examination report indicates that claimant weighed 387 pounds and was 70 inches in height. Her blood pressure was 148/82, pulse was 84, respiratory rate was 18 and temperature was 98.2. Pain was 0 on a 0 to 10 scale. She had an ECOG performance status of a 0 to 1 (Pg. 49). She was alert, oriented and answered questions appropriately. She was morbidly obese. Her head was normocephalic, atraumatic. No lesions noted. Eyes had normal extraocular movements, normal reaction of the pupils to light and accommodation. Ears and nose had no pathological discharge and no hemorrhage. The mouth had no cyanosis or pallor. Mucosa is moist and pink. There is no significant redness or inflammation. The neck was supple with no lymphadenopathy, or organomegaly, no JVD. No carotid bruits. The back there was no point tenderness, no tenderness on palpation of the dorsal spine. The lungs were clear to auscultation. There were no rales, rhonchi or wheezing. The lymphatics had no cervical, axillary or inguinal lymphadenopathy. The heart had regular rate and rhythm, S1 and S2 normal, no S3 or S4, no murmurs, rubs or gallops. The abdomen was difficult to assess due to morbid obesity. No masses were appreciated, no organomegaly. Claimant had a freely movable uterus. Cervix was grossly normal. Endometrial speculum was placed. Cervix was prepped with Betadine. Endometrial biopsy was obtained. The patient tolerated procedure well. The vulvar tissues were without any mass, tumor, ulcerations, no pigmentation changes. Bimanual

exam revealed no masses. In the extremities, there was bilateral lower extremity edema, non-pitting. In the neurological examination the strength was preserved in both upper and lower extremities, equal bilaterally. Deep tendon reflexes were 3+, equal bilaterally and equal between biceps, brachioradialis, plantar and Achilles as well as patellar. Sensitivity to light touch, pain and vibration is preserved on both upper and lower extremities. The skin was intact with no rashes, infection or bruises noted. The assessment was thickened endometrial stripe in a postmenopausal woman (Pg. 50).

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 and anxiety.

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.

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, upon reconsideration, 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: January 9, 2013

Date Mailed: January 9, 2013

2013-2105/LYL

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.

LYL/las

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