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

IN THE MATTER OF:



Reg. No:2013-10143Issue No:2009;4031Case No:1000Hearing Date:March 13, 2013Bay County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Admini strative 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 March 13, 2013. Claimant personally appeared and testified.

<u>ISSUE</u>

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 August 14, 2012m claimant filed an application for Medical Assistance, State Disability Assis tance and retr oactive Medical Assistance benefits alleging disability.
- 2. On October 2, 2012, the Medica I Review Team denied c laimant's application stating that claimant c ould perform other work pursuant to Medical/Vocation Rule 202.21.
- 3. On October 4, 2012, the department caseworker sent claimant notice that her application was denied.
- 4. On November 5, 2012, claimant filed a request for a hearing to contest the department's negative action.
- 5. On January 10, 2013, the State Hearing Review T eam again denie d claimant's application stating in its analysis and recommended decision: despite the claimant having c hest pains, all the c ardiac testing was normal. She had nor mal range of motion of all joints. Lungs are clear and heart within normal limits. She had a nor mal mental status examination.

As a result of the claimant combination of severe physical and mental condition, she is restricted to performing light work. She retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk for up to 6 of 8 hours. Claim ant 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 light work. Therefore, bas ed on the claimant's vocational profile (younger individual, 12th grade education, and light work history); MA-P is denied using Voc ational Rule 202.21 as a guide. SDA is denied per PEM 261 because the information in file is inadequate to as certain whether the claimant is or would be disabled for 90 days. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light work.

- 6. On the date of hearing claimant was a 45-year-old woman whose birth date is **Claimant is 5'7**" tall and we ighs 190 pounds. Claimant is a high school graduate. Claimant is able to read and write, but does have some comprehension problems and can add/subtract.
- 7. Claimant alleg es she last worked in 20 05 where s he drove a truck. Claimant has worked in housekeeping, cashier work and has do ne some security.
- 8. Claimant alleges as disabling impairments: agoraphobia, chest pain, fibromyalgia, chronic obstructive pulm onary diseas e, arthritis, lupus, and no bottom teeth as well as panic a ttacks, chip bone in the knee, dizzy spells, sciatica and three hernias.

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 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 elig ibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies 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 Sec urity Act and is implemented by T itle 42 of the C ode 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 substant ial 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 deter mine disability . Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I or mental ability to do basic work activities, it is not a severe impairment(s) and disab ility does not exist. Age, education and work ex perience will not be c onsidered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings wh ich demonstrate a medical im pairment.... 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 di sease 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 bas ic work activities is evaluated. If an individual has the ability to perform basic work activities with out 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 wa lking, 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidenc e relevant to the claim, including m edical opinions, is rev iewed 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 ev idence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical s ource finding t hat an individual is "d isabled" or "unable to work" does not mean that disability e xists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that s everal considerations be analyzed in s equential order. If disability can be r uled out at any step, analys is of the next step is <u>not</u> required. These steps are:

- 1. Does the client perform Substant ial 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 clie nt's symptoms, signs, and laboratory findings at least equiv alent 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 forme r work that he/she performed within the last 15 years? If yes, t he client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
- Does the client have t he Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, A ppendix 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 an April 25, 2012 medical examination report indicates that claimant is 5'8" tall and weighs 196 lbs. Blood pressure 128/82 and she is left hand dominate. Clin ical impression is that claimant is deteriorating and that she needs assistanc e for heavy house wor k and she cannot do vard work. That she had chronic anxiety and depress ion (p 9-10). The claimant was hospitalized on October 15, 2011 due to chest pains. She had a nor mal electrocardiogram and echocar diogram. T he physical examination reported normal range of motion of all joints. Her lungs were clea r and heart within normal lim its (p 13-18). She had a normal mental status evaluation (p 16). All other medical examination reports submitted by claimant were older t han October 15, 2011 but this Administrative Law J udge did consider a II evidenc e when making this decision. Claimant testified on the record that she lives with her husband in an apartment and she has no children under 18 who liv e with her. Claimant has no inc ome and does receiv e Food Assistance Program benefit s. Claimant does have a dr iver's license but her husband takes her where she needs to go. Claimant testified that her husband cooks, grocery shops and cleans the home. Claimant te stified that she watches television 12 hours per day and uses the computer 10 minutes per day. Cla imant testified that she can stand for a few minutes at a time, sit for 30 minutes at a time and walk to the bathroom. Claimant testified she cannot squat, bend at waist, shower and dress herself,

tie her shoes or touch her toes. Claimant testif ied that her level of pain, on a scale of 1-10, without medication is a 12, and with medication is a 9. Claimant testified she is right handed and that she has arthritis and the heaviest weight she can carry is 5 lbs and that she has arthritis in her knees and her feet swell and her left foot re-breaks. Claimant testified that she smokes 5-10 cigarettes per day, her doctor's have told her to quit and she is not in a smoking cessation program. Claimant testified that on a typic al day she watches television and lays in bed.

At Step 2, claimant has the burden of pr oof of establishing that she has a severe lv 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 associat ed 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 th at the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: agoraphobia and panic attacks.

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 record 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, the 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 constitute 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 capac ity is what an individual can do desp ite 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 class ify jobs as sedentary, lig ht, 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e docket files, ledgers, and small tools. Although a sedentary job is defined as one whic h 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 wor k 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 categor y 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 objecti ve 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 act ivities of daily liv ing do not appear to be very limit ed and sh e should be able to per form 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 comb ination of impairments which prevent her from performing

any level of work for a period of 12 mont hs. 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/ps vchiatric evidence contai ned 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 plac e during the hearing. Claimant's c omplaints of pain, while pr ofound 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 establis h that claimant has no residual functional capacity. Clai mant is dis qualified 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 45), with a high school education and an unsk illed work history who is limited to light/sedentary work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed tr eatment which would be expect ed to restor e their ability to engage in s ubstantial activity without good cause there will not b e a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The department's Program Elig ibility Manual contains the following policy s tatements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or older. BEM , Item 261, p. 1. Because the claimant does not meet the definition of disabled u nder the MA-P program and becaus e the evidence of record does not establish that claimant is unable t o work for a period exceeding 90 days, the claimant does not meet the disability cr iteria 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 Medi cal As sistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that the depar tment has appropriately estab lished on the record that i t was acting in compliance wit h department policy when it deni ed claimant's application for Medical Assistance, retroactive Medica I Assistance and Stat e 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**.

Landis

/s/

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

Date Signed: March 22, 2013

Date Mailed: March 22, 2013

NOTICE: Michigan Administrative Hearing S ystem (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 Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> 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 errors, 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

2013-10143/LYL

