

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-19615
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 23, 2013
Wayne County DHS (18)

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 April 23, 2013. Claimant personally appeared and testified. The department was represented at the hearing by [REDACTED], a Medical Contact worker.

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 16, 2012, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On October 22, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical/Vocational Rule 201.21.
3. On October 24, 2012, the department caseworker sent claimant notice that her application was denied.
4. On December 18, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On February 11, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision:

claimant has swelling of the joints in the hands bilaterally. An MRI of the right knee showed minimal degenerative change. The cervical spine showed minimal disc protrusion with mild spinal stenosis. We were not able to assess her mental disorder due to the psychiatrist's progress notes being difficult to read. A full psychological evaluation submitted by the claimant would be beneficial. As a result of the claimant's physical condition, she is restricted to performing light work. She retains the ability to lift up to 20 pounds occasionally, 10 pounds frequently and stand and walk for up to 6 of 8 hours. Claimant is not engaging in substantial gainful activity at this time. Claimant's severe impairments do not meet or equal any listing. Despite the impairments, she retains the capacity to perform light work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and light work history), MA-P is denied using Vocational Rule 202.21 as a guide. 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 46-year-old woman whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 154 pounds. Claimant is a high school graduate and does have the limited ability to read and write. Claimant can add, subtract and count money and was in special education when she was in school. Claimant also attended a certified nurse's assistant class.
7. Claimant last worked January 3, 2012 at [REDACTED] as a certified nurse's assistant. Claimant worked there for 20 years and does receive a long term disability check in the amount of \$1,400.00 per month which will end in approximately June 2013.
8. Claimant alleges as disabling impairments: rheumatoid arthritis, fibromyalgia, chronic fatigue syndrome, heart problems, anxiety, hypertension, depressions, back spasms, insomnia, inflammatory arthritis, nose cancer two years ago, allergies, gastritis, hiatal hernia, thyroid problems, bulging discs, bone spurs in the spine and neck, and tachycardia.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant lives with her husband in a house and has no children under 18 who live with her. Claimant does receive long term disability in the amount of \$1,400.00 per month and does not receive any benefits from the Department of Human Services. Claimant does have a driver's license and drives two times per week, approximately 10 miles, usually to get her medications at the store. Claimant testified that she does cook occasionally and usually makes sandwiches, cereal and frozen dinners. Claimant testified she does grocery shop with her husband every two months and she helps with pushing the cart and carrying the groceries. Claimant testified she does sweep and do laundry, watches television eight hours per day, bird watches and uses the computer approximately half an hour per day. Claimant testified she can stand for 30 minutes at a time, can sit for 40 minutes at a time and she can walk approximately one block. Claimant testified she uses a can which is recommended by her doctor because she is off balance. Claimant

testified she can shower and dress herself, bend at the waist and tie her shoes but that it is hard to squat and/or to touch her toes. Claimant testified that her knees are fused and have bone spurs, that she has fused bones in her feet and arthritis in her hands and wrists. Claimant testified that the heaviest weight she can carry is 7-8 pounds and that her level of pain on a scale from one to ten without medications is an eight and with medications is a six to a seven. Claimant testified that she does not smoke, drink or take any drugs beside medication and that she is taking approximately 10 medications. Claimant testified that in a typical day she is in pain; she takes her medications, she eats cereal and watches television, walks around the house then lays down to take a nap. When she gets up she eats lunch, and then she is up and down all day.

A letter dated December 14, 2012, from claimant's rheumatologist indicates that claimant has impairment that meets inflammatory arthritis (14.09 inflammatory arthritis). Persistent inflammation and deformity of feet and hands, knee, hip, back and spine cause chronic pain. She has difficulties with walking and moving. She suffers from severe fatigue and fibromyalgia. (Client exhibit one) A medical examination report dated September 12, 2012 indicates that claimant was a 45-year-old female. Height was 5ft., 4in., in stocking feet. Weight was 151 pounds. Visual acuity was 20/25 in the right eye and 20/30 in the left eye, without corrective lenses. The claimant's blood pressure was 130/88. The claimant is right-handed. Visual fields were normal by confrontation. The claimant's gait was slightly antalgic to the left, but was not unsteady, lurching or unpredictable. She did use a cane in the right hand that she stated was prescribed 2 years ago. She was tearful at times during the interview. Her physical examination was essentially normal except for the increase deep tendon reflexes in the lower extremities. There was no joint swelling noted. She appeared stable in the standing, sitting and supine positions. Intellectual functioning appeared normal during the examination. The claimant's hearing appeared to be adequate for normal conversation. The head was normocephalic. Conjunctivae, sclerae are clear. Pupils were equal, round and reactive to light and accommodation. The extraocular muscles were intact. Undilated funduscopic examination revealed no evidence of hypertensive or diabetic retinopathy. The oropharynx was clear, without lesions or exudate. The neck had no evidence of thyromegaly, palpable masses, lymphadenopathy, jugulovenous distention or hepatojugular reflux. The carotid arteries were normal and symmetrical bilaterally, without bruits. In the chest there was symmetrical excursion. There was no evidence of increased A/P diameter. The lung fields were clear to percussion. On auscultation, the lung fields had no wheezes or rhonchi noted. There was no accessory muscle recruitment noted. There was no chest tenderness to palpation. There was no dyspnea with exertion or in the supine position. There was no clubbing or cyanosis noted. Examination of the heart revealed a regular rate. There was no murmur, gallop or rub appreciated. The radial, dorsalis pedis and posterior tibial pulses were graded at 2+/4, without bruits. There was no evidence of peripheral vascular insufficiency or chronic venous stasis changes such as pigmentation or ulceration. There was no edema. There was no hair loss noted. The abdomen was flat with positive bowel sounds and was nontender. There was no evidence of organomegaly or masses. There was no rebound tenderness, guarding, rigidity or CVA tenderness. The shoulders, elbows and wrists were non-tender. There was no

redness, warmth, swelling or nodules. Examination of the hands revealed no tenderness, redness, warmth or swelling. There was no atrophy and the claimant was able to make a fist bilaterally. There were no Heberden or Bouchard's nodes. Grip strength measured 12, 2, 6 kg of force on the right and 6, 8, 12 kg of force on the left. This was normal and graded at 5/5 bilaterally. She was able to write with the dominant hand and pickup coins with either hand without difficulty. Examination of the legs revealed no tenderness, redness, warmth, swelling, fluid, laxity or crepitus of the knees, ankles or feet. There was no calf tenderness, redness, warmth, cord sign or Homans sign. Examination of the cervical spine revealed no tenderness over the spinous processes. There was no evidence of paravertebral muscle spasm. Examination of the dorsolumbar spine revealed normal curvature. There was no evidence of paravertebral muscle spasm. There was no tenderness to percussion of the dorsolumbar spinous processes. Straight leg raise test in the sitting and supine positions was normal. She was able to stand on one leg at a time without difficulty. There was no hip joint tenderness, redness, warmth, swelling or crepitus. The range of motion results were normal. Cranial nerves II-XII were intact. Muscle strength was normal. There was no evidence of atrophy noted. Sensory modalities were well preserved including light touch, pinprick and vibration. The biceps, triceps, and brachioradialis were symmetrical and graded normally at +2/4 bilaterally. The claimant had increased deep tendon reflexes in the patellar and Achilles reflexes in the lower extremities bilaterally. Hoffmann and Babinski's signs were negative. There was no clonus. In summery, claimant's upper extremities had normal function, strength and range of motion. She was able to pick up coins and pencils and to button and use a zipper with a minimum of difficulty. Her lower extremities also had normal function, strength and range of motion. There was no joint swelling or redness noted during the examination. The claimant was fairly limber and was able to walk on her toes and heels and to squat. The claimant did seem capable of non-strenuous type activities with a minimum of walking, standing and stair climbing. The claimant's ability to perform work-related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling as well as pushing and pulling heavy objects appeared to be at least moderately impaired due to the objective findings described above. (pg. 7-10)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of

proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, anxiety and insomnia.

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 is not considered disabled.

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**.

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

Date Signed: May 8, 2013

Date Mailed: May 8, 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.

201319615/LYL

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/aca

cc:

