

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-2447
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 16, 2013
Ionia 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 January 16, 2013. 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 January 24, 2012, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On July 18, 2011, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical/Vocation Rule 202.13.
3. On July 24, 2012, the department case worker sent claimant notice that her application was denied.
4. On October 1, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On November 7, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of breast carcinoma without evidence of recurrence. She is status post modified radical mastectomy, radiation and chemotherapy. The claimant reported diffuse arthralgias without significant joint abnormalities or joint destruction on examination. She did not have

any trigger points. She did appear to have some deconditioning. Grip strength and dexterity were intact. Gait revealed a mildly wide based gait without the use of an assist device. A mental status showed her thoughts were logical and organized. Her speech was clear and her affect was within normal limits. There was no evidence of psychosis or a thought disorder. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, medium 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 direct a finding of not disabled given the claimant's age, education and residual functional capacity. Therefore, based on the claimant's vocational profile (advanced age at 55, 12th grade education and history of unskilled work), MA-P is denied using Vocational Rule 203.14 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on January 16, 2013. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. Additional medical information was submitted and sent to the State Hearing Review Team on February 4, 2013.
8. On March 19, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of breast carcinoma without evidence of recurrence. She is status post modified radical mastectomy, radiation and chemotherapy. The claimant reported diffuse arthralgias without significant joint abnormalities or joint destruction on examination. She did not have any trigger points. She did appear to have some deconditioning in June, 2012. Grip strength and dexterity were intact. Gait revealed a mildly wide based gait without the use of an assist device. During her admission in July, 2012, the claimant was fully ambulatory and able to get on and off the examination table without difficulty. A mental status in June, 2012 showed her thoughts were logical and organized. Her speech was clear and her affect was within normal limits. There was no evidence of psychosis or a thought disorder. However, the claimant was admitted in July, 2012 because she was not attending to her daily needs. With adjustments in her medications, she was sleeping better and her symptoms improved. Her symptoms also improved with treatment of an UTI. In September, 2012, she was doing well and did not appear depressed. She was admitted in November, 2012 with dehydration and hypotension with near syncopal episode. Her EKG was normal. Hypertension medications were decreased. She was improved. The claimant is not currently engaging in substantial gainful activity based on

the information that is available in file. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, medium 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 direct a finding of not disabled given the claimant's age, education and residual functional capacity. Therefore, based on the claimant's vocational profile (advanced age at 55, 12th grade education and history of unskilled work), MA-P is denied using Vocational Rule 203.14 as a guide. Retroactive MA-P was considered in this case and is also denied.

9. On the date of hearing claimant was a 55-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 160 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have limited, basic math skills.
10. Claimant last worked in a laundry mat in 2001.
11. Claimant alleges as disabling impairments: cancer in remission, depression, fibromyalgia, environmental allergies, hypertension, underactive thyroid, acid reflux, and panic attacks.

CONCLUSIONS OF LAW

The regulations governing the hearing and a 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 claimant'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 an apartment and she has no children under 18 who live with her. Claimant has no income and does receive Food Assistance Program benefits. Claimant testified she never learned to drive and her husband takes her where she needs to go. Claimant testified she cooks one time per week and cooks things like dinners or bakes. Claimant testified that her husband does the grocery shopping and she does the sweeping and folds clothes. Claimant testified that she does latch hook or cross stitch as a hobby occasionally and she watches the computer 2 hours per day because they don't have a television. Claimant testified that she can stand for 10 minutes at a time, sit for 10 minutes at a time and she can walk from the door and back. Claimant testified that she can shower and dress herself but she needs help to get out of the tub, and she cannot squat or touch her toes and she can tie her shoes and bend a little at the waist. Claimant testified that her knees pop and her back hurts and that her level of pain, on a scale of 1-10, without medication is a 6, and with medication is a 4. Claimant testified that she is right handed and that her hands/arms hurt and her legs/feet hurt and the heaviest weight she can carry is 10 lbs. Claimant testified that on a typical day she gets dressed and goes to mental health meetings. Claimant testified that she was in Pine Rest for 10 days in July, 2012 because she had a breakdown and was dehydrated. Claimant's husband testified on the record that claimant is mentally deteriorating and she can't be left alone because she freaks out and she has to take about 14 different medications.

A mental status dated June 5, 2012 showed the claimant denied any psychiatric hospitalization (p 13). Her clothing and hygiene were appropriate. She was cooperative. Her thought processes were logical and organized. Her speech was clear and understandable. There was no evidence of psychosis or a thought disorder (p 15). Her affect was within normal limits (p 16). Diagnoses included depressive disorder and panic disorder (p 17). The claimant had a history of breast cancer in 2004. She

underwent a modified radical mastectomy of the left breast with subsequent radiation and chemotherapy (p 18). On examination June 14, 2012, the claimant was 65 ¾" and 158 lbs. her blood pressure was 163/105. Breath sounds were clear. Heart examination revealed regular rate and rhythm without enlargement and normal S1 and S2. There was no evidence of joint laxity, crepitation or effusion. Grip strength was intact and dexterity was unimpaired. There was no paravertebral muscle spasm noted (p 19). Motor strength was intact and muscle tone was normal. There was mild sensory loss to light touch at the plantar aspects of both feet. There was diminished toe tapping bilaterally. Reflexes were +2 and symmetrical in the upper and lower extremities. She walked with a mildly wide based gait without the use of an assist device (p 22).

The claimant was admitted in July 23, 2012 to August 3, 2012 after her husband reported that she had not been functioning. He indicated that he had to help dress her and she had been very confused, not attending to daily needs. She had visual hallucinations. This was her first psychiatric hospitalization. Her physical examination on admission showed her blood pressure was 104/77. She was missing teeth in the upper and lower jaw. Lungs were clear. Her left breast was surgically absent. Her heart was regular rate and rhythm without murmurs. She was fully ambulatory and able to get onto the examination table without difficulty. Strength seemed appropriate for age. There was only very slight tremor when she held her hands out. She walked without assistance. Reflexes were diminished throughout. There was no sensory loss. Her medications were changed and adjusted several times. With improved sleep, she had fewer panic attacks and was no longer hallucinating. She was treated for a UTI, which seemed to help her symptoms. Her mood seemed to stabilize and she was less confused and stable for discharge on August 3, 2012. On September 18, 2012, the claimant appeared to be doing well. She did not appear depressed. There were no signs of suicidality or homicidality. She was oriented times 3. She has a fair amount of sedation during the day, likely related to her medications, which the examiner planned to adjust. Diagnoses included mood disorder-NOS- in remission, depressive disorder NOS and rule out panic disorder with agoraphobia. The claimant was admitted November 25, 2012 to November 26, 2012 with dehydration and hypotension with near syncopal episode. Her laboratory tests were normal. Her EKG was normal. Her hypertension medication was decreased. She was discharged in improved condition.

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, agoraphobia, panic attacks, and hallucinations.

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, 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: March 29, 2013

Date Mailed: April 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

2013-2447/LYL

LYL/las

cc:

