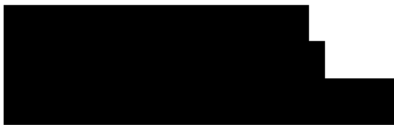


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2013-290
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: January 2, 2013
Kent 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 2, 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) 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 May 25, 2012 claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
2. On July 9, 2012, the Medical Review Team denied claimant's application stating that claimant could perform prior, relevant work.
3. On July 26, 2012, the department case worker sent claimant notice that her application was denied.
4. On September 17, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On November 13, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: per 20 CFR 416.909, the claimant's condition is not expected to last for a continuous period of 12 months; or, the claimant's impairment is expected to improve post operatively. 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 past work as a cleaner. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and medium work history); MA-P is denied using Vocational Rule 203.28 as a guide. SDA is denied per PEM 261 because the information in file is inadequate to ascertain 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 past work as a cleaner.

6. The hearing was held on January 2, 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 13, 2013.
8. On April 16, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant underwent ileocecal resection in May, 2012. She has recovered post surgically as expected. Her digestive condition did not satisfy the duration requirement for disability. Claimant also has a history of degenerative disc disease, cervical radiculopathy, and asthma. Asthma is controlled with medication. Lung function is adequate. On exam, claimant has mild weakness in the right upper extremity. Range of motion is limited secondary to pain; however, claimant reports improved pain with ongoing treatment and physical therapy. Despite the conditions, she retains the capacity to perform light work. 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 light work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity. Therefore, based on the claimant's vocational profile, MA-P are retroactive MA-P are denied using Vocational Rule 202.10 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
9. On the date of hearing claimant was a 49-year-old woman whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 121 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills. Claimant also has certified nurse assistant/phlebotomist training for 1 year.

10. Claimant is currently employed cleaning office buildings, working 2 hours per week, earning \$ [REDACTED]/week. Claimant has done housekeeping for approximately 25 years.
11. Claimant alleges as disabling impairments: ileocecal intussusception, cervical radiculopathy, degenerative disc disease, asthma, spinal stenosis, osteoarthritis, hysterectomy in 2011, chronic obstructive pulmonary disease, scoliosis, small tissue nerve damage and anxiety.

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 State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

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

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

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

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

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

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

...Medical reports should include –

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

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

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

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

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

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

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

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

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

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

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

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity although she is currently working, earning \$ █ wk working 2 hours per week. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that she lives with her son in a house, that she is divorcing and has no children under 18 who live with her. Claimant does have some income and does receive Food Assistance Program benefits. Claimant does have a driver's license and drives 3-4 times per week to the doctor. Claimant testified that she cooks two days per week and cooks things like tea, toast and cereal. Claimant testified that she doesn't grocery shop but she does the dusting and loads the dishwasher. Claimant testified that she watches television 30 minutes per day and she likes to do arts/crafts but currently cannot do them. Claimant testified that she can stand for 10 minutes at a time, sit for 10-15 minutes at a time and walk 1 block. Claimant testified that she can shower and dress herself, and tie her shoes but cannot squat, bend at waist and touch her toes. Claimant testified that she needs knee replacement surgery and that she has arthritis in her back. Claimant testified that her level of pain, on a scale of 1-10, without medication is a 12, and with medication is a 10. Claimant testified that she does need help with buttons and zippers and that she loses the use of her hands and feet sometimes for 45 minutes to an hour. Claimant testified that the heaviest weight she can carry is 5 lbs and that she doesn't smoke, drink or do any drugs. Claimant testified that on a typical day she makes toast and tea, does bible study, takes her medication, lays down because she has nausea all day, does bible study for an hour, and attends church one hour a week. Claimant testified that she did have breast cancer and a double mastectomy in 1998 and she has polyps adhered to her colon. Claimant testified her intestines were removed in May, 2012 and in October, 2012 she had reconstructive surgery and that is was outpatient surgery. Claimant testified that her son does everything for her and that she has gotten much worse.

A January 16, 2013 report indicates that claimant reported feeling better but she was having bilateral neck pain ranging in 8/10 on the pain line. She reported rest and stretching makes her feel better and activity makes her feel worse. Her posture was good. Her cervical range of motion was restricted with 60° left rotation and 50° right rotation. The assessment was that claimant has improved and she has not achieved the set goals of decreased pain and irritation. She has tolerated her treatments well and she is actively participating in physical therapy (p 712). An MRI of the lumbar spine without contrast taken August 18, 2012 indicated that claimant had mild degenerative changes at L2-L3 and L4-5. Findings are not significantly changed from previous exam. No discretely new process is shown. There was no high grade foraminal or canal stenosis seen at any level. There was no focal disc protrusions or disc herniations. No free fragments are noted. No convincing evidence of nerve root compression at any level (p 683). An MRI of the cervical spine dated August 18, 2012 indicates multilevel

degenerative changes. Findings are most notable at C4-5 on the right at C5-6 on the left where there are severe foraminal stenoses. Mild multilevel spinal canal narrowing without convincing evidence of spinal cord compression (p 681). An EMG and nerve conduction test dated August 15, 2012 indicated this study is suggestive of a chronic right cervical polyradiculopathy with no evidence of ongoing denervational change. Radiologic correlation is recommended. There is no electrodiagnostic evidence of a carpal tunnel syndrome or an ulnar neuropathy on the right. There is no electrodiagnostic evidence of a large fiber peripheral neuropathy or a right lumbosacral radioulopathy (p 680). A neural diagnostic study report dated October 31, 2012 indicates that claimant was 114 lbs, blood pressure 105/62, heart rate 90, and respiration 14. She was awake, alert, and oriented times 3. Not in distress. Fairly dressed and groomed. Speech was fluent and spontaneous without dysarthria. Ambulatory without any assistance or support. The head was normocephalic and atraumatic. The neck was supple. Visual fields were full to confrontation. Pupils were isocoric. Extraocular motility was full and conjugate in all directions of gaze. Intact and symmetric facial sensation and full pterygoid strength. No facial weakness. Intact and symmetric hearing to finger rub. Equal palatal elevation and symmetric shoulder shrug. Midline tongue. No gross muscle atrophy or fasciculations. No tremors or extra movements. Tone was physiologic. Strength 5/5 in most muscle groups tested both proximally and distally in the upper and lower extremities except for her right arm which was approximately 4/5 with pain inhibition. No dysmetria nor dydinchokinesia. Deep tendon reflexes were symmetrically +2. Sensory examination was symmetrically intact to light touch. Gait and station were normal. She only had mild degenerative arthritic changes in her lumbar spine unchanged from 2008 (p 672). This Administrative Law Judge did consider all 700+ pages of medical reports contained in the file when making this determination.

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: anxiety and depression.

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. Under the Medical-Vocational guidelines, a person who is closely approaching advanced age (age 50), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.10.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

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

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

Date Signed: April 22, 2013

Date Mailed: April 23, 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.

2013-290/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/las

cc:

