

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-72412
Issue No: 2009
Hearing Date: November 21, 2012
Livingston 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, an in person hearing was held on November 21, 2012. Claimant personally appeared and testified. Claimant was represented by [REDACTED] of [REDACTED]. The department was represented at the hearing by Family Independence Manager, [REDACTED].

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 May 10, 2012, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On May 19, 2012, the Medical Review Team denied claimant's application stating that claimant was involved in substantial gainful employment.
3. On May 23, 2012, the department case worker sent claimant notice that her application was denied.
4. On August 16, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On October 10, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant has a history of coronary artery disease with coronary artery bypass

grafting in 2011. She is obese with hypertension, but her physical exams are within normal limits. The evidence does not substantiate the allegation of TIA. She takes prescription medication for depression, but does not have a history of severe mental limitations. Despite her 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 is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on November 21, 2012. 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 November 26, 2012.
8. On May 1, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the records in file do not show any history of bypass surgery. She has a history of MI and stent to the obtuse marginal branch in March, 2011. She had repeat cardiac catheterization in February, 2012 for recurrent chest pain revealing a 50-60% stenosis in the left anterior descending and 70% stenosis in the acute marginal branch and had another MI following a hysterectomy. Cardiac catheterization revealed mid LAD 75% and 70% stenosis reduced to 0% with stenting and angioplasty. In October, 2012 cardiac catheterization revealed low normal function, ejection fraction of 55%, widely patent stents to the LAD and obtuse marginal vessel. There was otherwise just mild disease. The claimant was obese with a BMI over 50. 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 (closely approaching advanced age at 51,

high school education and history of unskilled work), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

9. Claimant is a 50-year-old woman whose birth date is [REDACTED]. Claimant is 5'3" tall and weighs 298 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills. Claimant was in special education for reading.
10. Claimant last worked June 3, 2012 doing care and assistance as a home health care aide. Claimant has also worked at [REDACTED] as a cashier, stuffing ads and housekeeping.
11. Claimant alleges as disabling impairments: asthma, coronary artery disease, mini stroke, shortness of breath, arthritis, two heart attacks, chest pain, two stents, congestive heart failure, high cholesterol, sleep apnea, migraines, hysterectomy, stress, depression 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 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 is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant lives with her boyfriend in a house and is divorced with no children under 18 who live with her. Claimant has no income and does receive Food Assistance Program benefits. Claimant does have a driver's license and she does drive as needed usually two-three times per week to the store and she has a 25 minute drive. Claimant testified that she does cook lunch and breakfast and cooks things like toast and fruit. Claimant does grocery shop 1-2 times per week and she uses the amigo cart. Claimant does vacuum, sweep and do laundry and she crochets 2 hours per day and watches television 6 hours per day. Claimant testified that she can stand for 10 minutes at a time, sit for 1 hour at a time and can walk a few feet. Claimant testified that she is able to bend at the waist, shower and dress herself and tie her shoes if she is sitting and puts her feet up. Claimant cannot squat or touch her toes. Claimant testified that her low back hurts and that she has arthritis in her right knee. Claimant testified that her level of pain, on a scale of 1-10, without medication is a 10, and with medication is a 4. Claimant testified that she is right handed and that she has swelling in her arms/hands and swelling in her legs/feet. Claimant testified that the heaviest weight she can carry is 10 lbs. Claimant testified that she does smoke 10 cigarettes per day, her doctors have told her to quit and she is not in a smoking cessation program. Claimant testified that she does not drink alcohol or take any drugs. Claimant testified that she does engage in sexual relations with difficulty and pain. Claimant testified that on a typical day she gets up, uses the bathroom, washes, watches morning news, plays with the cat, attempts to do the dishes, takes a nap, she is in bed by 9 pm and she takes her medications during the day.

A cardiology office visit dated July 16, 2012 indicated the claimant had a history of myocardial infarction (MI) and stent placement to the obtuse marginal branch in March, 2011. She had repeat cardiac catheterization in February, 2012 for recurrent chest pain revealing 50-60% stenosis in the left anterior descending (LAD) and 70% stenosis in the acute marginal branch and patent obtuse marginal. No intervention was performed at that time. She was admitted for a hysterectomy in June, 2012 and her postoperative ECG showed significant changes. She was ruled in for non-ST elevation MI. An echocardiogram revealed mid LAD 7% and 70 stenosis reduced to 0% with stenting and angioplasty (A-31 and A-32). A 2-D echocardiogram dated September 24, 2012 demonstrated normal left ventricular function with no regional wall motion abnormalities. Her ejection fraction was 60% (records from DDS). A cardiology letter dated November 1, 2012 showed the claimant presented to the hospital October 31, 2012 with recurrent chest pain. She had no EKG changes and ruled out for an MI. She continued to have chest pain and was taken for cardiac catheterization. It revealed low normal function, ejection fraction of 55%, widely patent stents to the LAD and obtuse marginal vessel. There was otherwise just mild disease. The cardiologist's opinion that her chest pain was noncardiac after the catheterization (records from DDS). A physical exam in February, 2012 indicated claimant complained of chest pain. She has a history of hypertension, coronary artery disease with coronary artery bypass grafting in March, 2011, and headaches (p 30-32). An August, 2012 office visit indicates that claimant was seen regarding a contusion, ganglion cyst, sleep apnea, and depression. BMI was 51.01. The lungs were clear. Balance and gait were intact (DDS records). An April 30, 2012 medical examination report indicates that claimant was well developed, obese, white female in no acute distress. Her blood pressure was 199/95, pulse was 66 and regular. The head was atraumatic and normocephalic. Pupils were equal and reactive to light. Sclerae were anicteric. The oral mucosa was moist. The neck was supple with no JVD, adenopathy or thyromegaly. The chest was clear to auscultation and percussion. Respirations were unlabored. In the cardiovascular area, the pulses are +2 and equal bilaterally without bruit. S1 and S2 are within normal limits. There is no S3, S4 or murmur. There is no heave or thrill. There is no click or rub. The abdomen is obese with no appreciable hepatosplenomegaly or masses. The extremities had no cyanosis or edema. The patient was oriented times 3. Mood and affect were appropriate. The skin had no rashes (p 29).

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: stress, depression and anxiety.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he 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),

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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

LYL/las

cc:

