

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-738
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 9, 2013
Lapeer 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 9, 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 April 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 could perform other work.
3. On May 23, 2012, the department case worker sent claimant notice that her application was denied.
4. On July 24, 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 recommended decision: the claimant is status post-operative lumpectomy that was followed by chemotherapy and radiation treatment. The PET scan was negative for recurrence. The electromyogram was positive for moderate carpal tunnel syndrome with the right more than the left hand. The motor examination revealed a slight weakness in both hands. There was a decreased in

sensation to light touch below the elbows. As a result of the claimant's combination of severe physical and mental condition, she is restricted to performing light work. She retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk for up to 6 of 8 hours. 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 202.20 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. The hearing was held on January 9, 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 January 10, 2013.
8. On February 19, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant is status post lumpectomy, chemotherapy and radiation treatment for breast cancer. There is no evidence of recurrence or spread. The claimant reports back pain with radiation to both legs. EMG/nerve conduction studies in January, 2012 showed mild peripheral polyneuropathy, moderate bilateral carpal tunnel syndrome and no evidence of radiculopathy. In January, 2012, muscle strength was 4/5, there was decreased sensation in both upper extremities and deep tendon reflexes were 2+/4+ in the right lower extremity. Gait was independent. The objective evidence in file does not support the doctor's statement that the claimant is unable to work to severe peripheral neuropathy. 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 almost 50, 12th grade 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. On the date of hearing claimant was a 49-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 180 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.

10. Claimant last worked at Best Western in housekeeping for a total of 26 years. Claimant receives Social Security income because of her deceased husband.
11. Claimant alleges as disabling impairments: peripheral neuropathy, breast cancer, nerve damage, carpal tunnel syndrome, arthritis in the hips and migraines.

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 testified on the record that she is single and lives with her son and grandson and they pay the rent. Claimant has no children under 18, no income and receives Food Assistance Program benefits. Claimant does have a driver's license and does drive 2-3 times per week and usually drives to [REDACTED] [REDACTED]. Claimant testified that she grocery shops 1 time per week and she usually leans on the cart and she does dishes, cleans the floor on her hands and knees and does laundry. Claimant testified that she watches television 3 hours per day and uses the computer 1.5 hours every other day. Claimant testified that she can stand for 12 minutes, sit for 20 minutes and can walk 10 ft. Claimant can shower and dress herself, tie her shoes while sitting but cannot squat, bend at waist or touch her toes. Claimant testified she has degenerative disc disease in her back and that her knees hurt. Claimant testified her level of pain, on a scale of 1-10, without medication is a 9, and with medication is a 6. Claimant testified she is ambidextrous and does have carpal tunnel syndrome and she has pain in her legs/feet. The heaviest weight she can carry is 2 lbs. Claimant testified that she does smoke 9 cigarettes per day, her doctor's have told her to quit and she is not in a smoking cessation program.

A statement dated August 29, 2012 from the claimant's doctor indicated the claimant is unable to work secondary to severe peripheral neuropathy (Ex 6, p 1). A January 16, 2012 neurology report indicates that claimant weighed 189 lbs, height 62", blood pressure 123/96, pulse 107, BMI 34.6. Vital signs were stable. Head and neck examination revealed tenderness in the lower cervical spine greatest to the left of midline. Chest was clear to auscultation and percussion. Cardiac exam revealed normal heart sounds. Abdomen was soft with no rebound or tenderness. Extremities revealed no pitting edema. Peripheral pulses were intact in the upper and lower extremities. Skin was warm with normal turgor. Back examination revealed tenderness in the lower lumbar spine most prominent at the lumbosacral junction. Straight leg raising elicited sciatic pain at 90° bilaterally. Mental status examination within normal limits to the patient's age. The patient was alert and oriented to time, place and person. Speech was fluent. Recent and remote memory function within normal range. Cranial nerves II-XII were grossly intact including visual field, extraocular movement, pupillary light reflex and accommodation, sensation in the face, corneal and jaw reflexes, upper and lower facial muscles, hearing, equilibrium, palate elevation, motor strength in the sternocleidomastoid and trapezius muscles, tongue protrusion and symmetry. Motor exam revealed weakness in both groups at 4/5 on a scale of 0-5. Sensory examination revealed decreased sensation to light touch and pinprick in both upper extremities below elbows. There was positive Tinel's sign on the left. Cerebellar examination revealed normal finger to nose, heel to shin and rapid alternating movements. Deep tendon reflexes were 2+/4+ in the upper and lower extremities except for 1+/4+ in the right lower extremity. Plantar response was flexor bilaterally. Gait was independent, tandem gait intact. The patient was able to walk on toes and heels without difficulties. Romberg's test was normal (Ex 6, p2).

At Step 2, claimant has the burden of proof of establishing that she has a severe ly 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 no disabling mental impairments.

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

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

LYL/las

cc:

