

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-32139
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: July 10, 2013
Emmet 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 July 10, 2013. Claimant personally appeared and testified. The department was represented at the hearing by Eligibility Specialist, [REDACTED] and Eligibility Specialist, [REDACTED].

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 July 12, 2012, claimant filed an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
2. On January 28, 2013, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On February 7, 2013, the department caseworker sent claimant notice that her application was denied.
4. On March 1, 2013, claimant filed a request for a hearing to contest the department's negative action.
5. On May 10, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence of record supports that the claimant reasonably retains the capacity to perform light exertional tasks. The evidence does not

support the presence of severe psychiatric impairments. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform light exertional tasks. The evidence does not support the presence of severe psychiatric impairments. The claimant has a history of less than gainful employment. As such, there is no past work for the claimant to perform, nor are the re past work skills to transfer to other occupations. Therefore, based on the claimant's vocational profile (42 years old, a less than high school education and a history of less than gainful employment), MA-P is denied, 20CFR416.920(e&g), using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this determination and is also denied. SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02/04, 3.02, 8.04/05, 11.14 and 12.04 were considered in this determination.

6. Claimant is a 42-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 130 pounds. Claimant attended the 10th grade and does not have a GED. Claimant testified that she was in special education for math and science. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked in 2003 as a housekeeper. Claimant has also worked as a waitress.
8. Claimant alleges as disabling impairments: breast removal in 2011, allergies, depression, eczema, skin infection, herniated discs, chronic obstructive pulmonary disease, lymphedema, bronchitis, and breast cancer in 2011 which is in remission.

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 Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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 lives with her husband and son in a house and she is married with no children under 18 who live with her. Claimant has no income and does not receive Food Assistance Program benefits and Adult Medical Program benefits. Claimant stated she does not have a driver's license and her husband or friends take her where she needs to go. Claimant testified that she does cook 2 times per week and cooks things like chicken and pork chops and she does grocery shop 1 time per month with help needed keeping track of how much she spends because her math is not all

that great. Claimant testified that she does dishes and makes the bed and she watches television 1 hour per day. Claimant testified that she can stand for 5-10 minutes at a time, sit for 10-20 minutes at a time and can walk ½ mile. Claimant testified that she is able to squat, shower and dress her self and tie her shoes, but cannot bend at the waist or touch her toes. Claimant testified that her knees are fine, her hands/arms are fine and she has eczema and blisters on her right leg and foot. Claimant testified that she does smoke 3 cigarettes per day, her doctors have told her to quit and she is not in a smoking cessation program, but she has cut back. Claimant testified that she does not drink or do any drugs. Claimant testified that on a typical day she makes her bed, takes shower, does dishes, cooks, watches movie and then goes to bed. Claimant testified that she is not able to engage in sexual relations.

A January 18, 2012 medical examination report indicates that claimant was 5'2" tall and weighed 129 lbs with a BMI of 23.6. Temperature was 97.5°, blood pressure 119/75, pulse 87 beats per minute, respiration 12 beats per minute, oxygen saturation rate 99%. She was well developed, well nourished, well groomed and seemed to be in moderate pain. Eyes were fine. Trachea was midline and jugular veins were normal in the neck area. She had normal respiratory rate and pattern with no distress; normal breath sounds with no rales, rhonchi, wheezes or rales. The cardiovascular area had normal rate; rhythm is regular; no systolic murmur; no cyanosis; no edema. The gastrointestinal area was non-tender. The musculoskeletal area indicated a slow gait; decreased range of motion noted in back flexion, extension, and lateral flexion; pain with range of motion in: back flexion, extension and lateral flexion. She was anxious. She had normal speech pattern; normal thought and perception (p 107). She was assessed with low back pain and several bulging discs, lumbar area, one touching but not pinching the nerve roots and adjustment insomnia (p 106). An April 10, 2012 examination indicates claimant was assessed with low back pain and anterior chest wall pain but a basically normal examination (p 97-99). A July 12, 2012 examination indicates that claimant was assessed with dyshidrosis and unspecified skin lesion with the rest of her examination grossly normal. She was well developed, well-nourished and in no acute distress. Her hearing was grossly normal. Her neck was supple with full range of motion. She had normal respiratory rate and pattern with no distress. Lung fields normal to palpation. Her lymphatic system had no enlargement of cervical nodes; no axillary adenopathy. She had no clubbing, cyanosis, or evidence of ischemia or infection. Normal gait with grossly normal tone and muscle strength. Full, painless range of motion of all major muscle groups and joints no laxity or subluxation of any joints. No masses, effusions, misalignment, crepitus, or tenderness in major points. She had dyschidrotic eczema and a rash was noted on the lower extremities. She had some skin thickening and subcutaneous nodules. The color was mainly hypopigmented and red and it was best characterized as scaling. Neurologically her cranial nerves II-XII were grossly intact. Her psychiatric area indicated her mental status as alert and oriented times 3. She had appropriate affect and demeanor. Her recent and remote memory were intact. She had good insight and judgment (p 83). An August 2, 2012 medical examination report indicates that claimant had a basically normal examination but she was assessed with viral warts and dyshidrosis (p 78). An October 10, 2012 medical examination report indicates a basically normal evaluation. She was assessed with dizziness, low back pain and follow up exam to authorize medication refills. Her affect/demeanor was anxious. Normal speech pattern and normal thought and perception. Her mental status

was alert, oriented to person, place and time. The musculoskeletal area showed a decreased range of motion noted in: the neck, back flexion and lateral flexion; pain with range of motion in: the neck, back flexion and lateral flexion (p 66). A July 9, 2012 Social Security Administration ruling indicates that the Appeals Council denied claimant's request for a review of the Administrative Law Judge's decision dated April 15, 2011 that determined that claimant was not disabled (p 26).

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.

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 younger individual (age 42), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.17 and 20CFR416.920(e&g).

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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: July 17, 2013

Date Mailed: July 17, 2013

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings 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.

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

2013-32139/LYL

LYL/las

cc:

