

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-19654
Issue No: 2009
Case No: [REDACTED]
Hearing Date: March 13, 2013
Bay 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 March 13, 2013. Claimant personally appeared and testified. Claimant was represented at hearing by [REDACTED] of [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 August 22, 2012 claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On October 8, 2012, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
3. On October 10, 2012, the department caseworker sent claimant notice that her application was denied.
4. On December 26, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On February 14, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has multiple sclerosis (MS) and was admitted in July, 2012 with an exacerbation. Since her admission, her ambulation has been affected. In October, 2012, she had mild end-gaze horizontal nystagmus bilaterally. Muscle strength testing revealed mild left upper and lower extremity

weakness at 5-. Sensory functions were intact. Gait revealed ataxia and limping on the left. Reflexes were 3+ bilaterally at the biceps, triceps, brachioradialis and patella. Right ankle jerk was 3+ and left was 2+. Babinski reflex was absent bilaterally. There were no involuntary movements. 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 sedentary 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 (younger individual, 12th grade education and history of semi-skilled/skilled work), MA-P is denied using Vocational Rule 201.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. On the date of hearing claimant was a 38-year-old woman whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 190 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills but stated she cannot write because of her MS.
7. Claimant last worked approximately 5 years before the hearing at [REDACTED] [REDACTED] as a customer service representative. Claimant has also worked as a clerk at [REDACTED] bartender and as a cashier at [REDACTED].
8. Claimant alleges as disabling impairments: multiple sclerosis, vertigo, fatigue, loss of sight in the right eye, and nausea. Claimant alleges no disabling mental impairments.

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 lives with her husband and her 18 year old son and she is married 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 but she does not drive, her husband takes her where she needs to go. Claimant testified that her husband cooks and grocery shops and she sometimes does the vacuuming and laundry. Claimant testified that she watches television 6 hours per day. Claimant testified that she can stand for 10 minutes at a time, sit for no limit and cannot walk at all unless she is holding onto something and she does have a cane and she can walk a couple of blocks with its use. Claimant testified she can squat, shower and dress herself, bend at the waist and touch her toes but she cannot tie her shoes. Claimant testified that her back is fine and her knees are fine. Claimant testified that she doesn't really have any pain, and that she is left handed and that she has some nerve damage in her left hand and her legs/feet are fine. Claimant testified that the heaviest weight she can carry is a gallon of milk and that she doesn't smoke, drink or do any drugs. Claimant testified that on a typical day she mostly sleeps, gets dressed, walks around, picks up around the house, watches television then goes back to sleep.

An October 30, 2012 neurology report indicates that claimant was in no acute distress, her head and face were normal. Ophthalmoscopic examination showed no papilledema. In the cardiovascular area the auscultation of the heart had regular rate and rhythm without murmur, gallop or rub. The carotid pulses had no bruits. Peripheral vascular examination showed peripheral pulses are intact. She was oriented to person, oriented to place and oriented to time. The short term memory was intact, remote memory intact and recent registration memory intact. The attention span was normal, normal concentrating ability and visual attention was not decreased. She had no difficulty naming common objects. Cranial nerves, visual acuity and visual fields were intact, facial sensations were intact, hearing was intact, neck extensors and flexors were intact, no facial weakness, there was normal movement of the soft palate and normal gag and there was no tongue deviation with protrusion. Cranial nerves III, IV and VI had mild, end gaze horizontal nystagmus bilaterally. The muscle strength in the right upper extremity was abnormal (mild left upper and lower extremity weakness (5-MRC)). In the sensory exam light touch was intact. Pain and temperature sensation was intact. Gait and station was abnormal. Gait evaluation demonstrated ataxia and limping on the left. Coordination was normal, including finger to nose, heel to shin and rapid alternation movements. Reflexes: biceps were right 3+, left 3+; triceps, right 3+, left 3+; brachioradialis, right 3+, left 3+; patella, right 3+, left 3+; ankle jerk, right 3+, left 2+; babinski reflex absent on the right and absent on the left; no tremors noted and no fasciculations observed. The assessment was multiple sclerosis (p 120). A November 20, 2012 medical examination report indicated the clinical impression was claimant was stable and the neurologist opined the claimant was totally disabled (p 118). An MRI of the head without contrast dated July 14, 2012 indicates a marked improvement of the supra and infratentorial multiple sclerosis. A June 15, 2012 progress report indicates that claimant was unsteady, but the MRI shows improvement since last MRI. The blood pressure was 95/63, pulse 74, temperature 97.5°, respiratory rate 18, height 5'8", weight 190 lbs, BMI 28.95, oxygen saturation on room air 98%. Her HEENT showed mucous membranes were moist. Her lungs were symmetrical. She had symmetrical chest expansion, no retraction. Clear breath sounds. The heart has S1, S2, normal rate and rhythm. No murmurs or gallops. Neurologically she was awake and oriented times 3, NAD (p 34).

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 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 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 38), with a high school education and an unskilled/semiskilled work history who is limited to sedentary work is not considered disabled pursuant to Medical Vocational Rule 201.28.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant

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