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

IN THE MATTER OF:

[redacted]

Reg. No: 2013-28236
Issue No: 2009;4031
[redacted] [redacted]
Hearing Date: June 4, 2013
Oakland-04 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 June 4, 2013. Claimant personally appeared and testified. The department was represented at the hearing by Eligibility Specialist, [redacted] [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 6, 2012, claimant filed an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits alleging disability.

2. On January 23, 2013, the Medical Review Team denied claimant's application stating that claimant could perform prior, relevant work.

3. On January 30, 2013, the department caseworker sent claimant notice that her application was denied.

4. On February 1, 2013, claimant filed a request for a hearing to contest the department's negative action.

5. On April 15, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant has a history of gastric bypass surgery. She complains of malnutrition. The DHS-49 notes muscle wasting and weakness, but her BMI is in the overweight range and she was ambulatory. Despite the condition and

symptoms, 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 and retroactive MA-P are denied using Vocational rule 202.10 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

6. Claimant is a 52-year-old woman whose birth date is [redacted]. Claimant is 5' tall and weighs 140 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.

7. Claimant last worked in 2012 as a direct care aide. Claimant has also worked as a housekeeper and in a nursing home for 26 years as a ward clerk where she answered phones, readied and filed charts and fax prescriptions.

8. Claimant alleges as disabling impairments: malnutrition as a result of gastric bypass surgery.

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 brother in a house 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 and drives 1-2 times per week to the grocery store. Claimant testified that she does cook microwave foods and she does grocery shop one time per week with no help needed. Claimant testified that she does vacuum, dust and do laundry and she plays computer games 2 hours per day and watches television 8-10 hours per day. Claimant testified that she can stand for 1 hour at a time, sit for 5-6 hours at a time and can walk 1 mile. Claimant testified that she can squat, bend at waist, shower and dress herself, tie her shoes and touch her toes. Claimant testified that her knees and back are fine, she is right handed and that her hands/arms are fine and her legs/feet are fine. Claimant

testified that she has occasional pai n in her back and her level of pain, on a scale of 1-10, without medication is a 7, and with medication is a 2. Claimant testified that the heaviest weight she c an carry is a gallon of milk and that she does n't smoke, drink or take any drugs exc ept medication. Claimant testified that on a typical day s he brushes her teeth, washes up and wash es her hair , watches televis ion, goes on the computer, applies for jobs and watches more telev ision. Claimant testified t hat she could probably work as a cashier, as sisting the elderly or as a receptionist. Claimant goes to the doct or every six months and her doctor has not told her she cannot work at any job.

A February 26, 2013 letter from [redacted] indicates that claimant has been unable to work since June 4, 2010 due to her severe illness and malnutrition, which has left her total incapac itated. At this point in time, an esti mated minimum recovery time is six to twelve months (Client Ex. A). A DHS-49 form in the file dated July 19, 2012 indicates that claimant is normally appear ing and does have s ome wheezing in her respiratory system. T he clinic al impression was that s he was stable. She had a flat affect. She had a hist ory of gastric bypass surgery with malnutrition. Her BMI was 27.3. Blood pressure was 112/60. On examine she had so me muscle wasting and wheezing(p 8-9).

At Step 2, claimant has the burden of pr oof of establishing that she has a severe ly restrictive physical or mental impairment that has lasted or is e xpected to last for th e 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 clinic al findings that suppor t the reports of symptoms and limitations made by the claimant. There are no labor atory or x-ray findings listed in the file whic h support claimant's contention of disability. The clinical impre ssion is that claimant is stable. There is no m edical finding that claim ant has any muscle at rophy or trauma, abnormality or injury that is c onsistent with a deteriorating c ondition. In short, claimant has restricted herself from tasks associat ed with occupational functioning based upo n her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has me t the evidentiary burden of proof can be made. This Admini strative Law Judge finds th at 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 ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions of activities of daily living, social functioning; c oncentration, persistence, or pace; and ability to tolerat e increased mental demands associated wit h com petitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric e vidence in the record indicating claimant suffers severe mental limitations . There is a no mental residual functional capacity assessment in the record. There is in sufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it w ould 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 objecti ve 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 ligh t or sedentary tasks if demanded of her. Claimant's act ivities of daily liv ing do not appear to be very limit ed and sh e should be able to per form 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 comb ination of impairments which prevent her from performing any level of work for a period of 12 mont hs. 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/ps ychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it w ould prevent claimant from worki ng at any job. Claimant was able to answer all the questions at the hearing and was responsive t o the questions. Claimant was oriented to time, person and plac e during the hearing. Claimant's c omplaints of pain, while pr ofound and credi ble, are out of proportion to the objective medical ev idence c ontained in t he 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 establis h that claimant has no residual functional capacity. Clai mant is dis qualified fr om re ceiving disabilit y 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 clos ely appr oaching ad vanced age (age 52) , with a high school educat ion and an unskilled work his tory who is limited to light work is not considered disabled.

The department's Program Elig ibility Manual contains t he following policy s tatements and instructions for casework ers regarding t he State Disabi lity As sistance pr ogram: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or older. BEM , Item 261, p. 1. Beca use the claimant does not meet the definition of disabled u nder the MA-P program and becaus e the evidence of record does not establish that claimant is unable t o work for a period exceeding 90 days, the claimant does not meet the disability criteria for Stat e Disability Assistanc e benefits either

The Department has establishe d by the nec essary competent, material and substantial evidence on the recor d that it was acting in compliance with depar tment policy when it determined that claimant was not eligib le to receive Medi cal As sistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that the depar tment has appropriately establis hed on the record that i t was acting in compliance wit h department policy when it deni ed claimant's application for Medical Assistanc e, retroactive Medical Assistance and Stat e Disability Assistanc e benefits. The claimant should be able to perfo rm 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.**

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

Date Signed: June 18, 2013

Date Mailed: June 18, 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

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