

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

IN THE MATTER OF:

[REDACTED]

Recon Reg. No.: 14-008218-RECON
Old Reg. No.: 14-008218
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: September 24, 2014
County: Oakland #3

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECONSIDERATION HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 15, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED] along with Authorized Hearings Representative [REDACTED] of L and S Associates. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The original hearing was held by Administrative Law Judge William A. Sundquist. This Reconsideration Hearing Decision and Order was completed by Administrative Law Judge Landis Y. Lain after considering the entire record.

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 January 23, 2014, Claimant filed an application for Medical Assistance and retroactive Medical Assistance as well as State Disability Assistance benefits alleging disability.
2. On May 2, 2014, the Medical Review Team denied Claimant's application stating that claimant could perform prior relevant work.
3. On June 13, 2014, the Department caseworker sent Claimant notice that the application was denied.

4. On July 25, 2014, L&S Associates filed a request for a hearing to contest the Department's negative action.
5. On September 24, 2014, the hearing was held.
6. Claimant is a 58-year-old woman whose date of birth is [REDACTED]. Claimant is a high school graduate and has a history of unskilled and semiskilled work as an office manager.
7. Claimant alleges as disabling impairments: transient ischemic attack, arthritis, diabetes mellitus, ulcerative colitis and fibromyalgia.
8. On September 25, 2014, Administrative Law Judge William A. Sundquist issued a hearing decision and order stating that disability was not established and upholding the Department's denial of Claimant's application for Medical Assistance eligibility.
9. On September 30, 2014, L&S Associates filed a request for a rehearing/reconsideration stating that the ALJ erred in finding that claimant has no severe impairment and in not addressing the MRT decision of disability.
10. On November 3, 2014, Supervising Administrative Law Judge C. Adam Purnell approved Claimant's request for a reconsideration stating: judge Sundquist areas including that the medical assessment report of September 16, 2014 does not establish a severe physical impairment from Wendy's duration. Just Sundquist thereby failing to address any of the claimant's testimony. Judge Sundquist. Refusing to allow claimant's testimony that her physical therapists have recommended that instead of using a cane she should use a walker.
11. On December 2, 2014, the reconsideration was assigned to Administrative Law Judge Landis Y. Lain.

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). Claimants 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 Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the

statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance program differs from the federal Medical Assistance regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 does 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 Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant 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 Claimant'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 Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant 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 Claimant are ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

This Administrative Law Judge did consider the entire record in making this decision.

At Step 1, Claimant is not engaged in substantial gainful activities. According to documentation in the file Claimant had not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence in the file indicates that claimant indicates that her physical therapist had recommended instead of using a cane she should use a walker. Claimant testified that she cannot walk without a cane and a brace and that she also need the assistance of a person on the side opposite the cane.

A [REDACTED] neurological surgery examination indicates that claimant was 4'11" tall and weighed 148 pounds. Her BMI was 29.89. Her blood pressure was 107/75. Her temperature was 98.2°F. Pulse was 70° per minute. Her psychiatric evaluation was normal; she was oriented to time, place, person and situation. She was not anxious. She had appropriate mood and affect. She had chronic right knee pain, it was difficult to tell if the weakness in the right lower extremity was due to pain or true weakness. Left lower extremity in slight proximal weakness, slow gait, steady and uses the quad cane for ambulation. The neurological examination was normal cranial nerves two through 12 were grossly intact. Sensory was normal. Coordination was normal. Fine motor skills were normal. She had mild bilateral hip flexion weakness. The respiratory area was normal and clear to auscultation. She was in no acute distress. She was well nourished and well-developed. She was assessed with the basilar artery aneurysm, page 2.

At [REDACTED] cerebral angiogram indicates a right common femoral artery, no abnormalities present, page 7. The left of vertebral artery cervical had extreme tortuosity of the proximal carotid artery, page 8. A September 19, 2013 MRI of the cervical spine indicates a shallow disc osteophyte complex mildly intensive thecal sac and contributes to minimum foraminal narrowing. There is a right facet Arthur P with associated edema of the facets. No significant edema is noticing round and enjoyed at C4 – 5. C5 – 6 right para-central disc osteophyte complex minimally indents thecal sac, page 9.

A [REDACTED], progress note indicates that claimant was assessed with ulcerative colitis unspecified, page 40. A November 25, 2013 consultation indicates that claimant was assessed with aphasia with an incidental finding of basilar apex fusiform dilatation/aneurysm measuring 8.5 mm, page 35. A November 24, 2013 consultation indicates that claimant was seen in neurology regarding a cerebral vascular accident and transient ischemic attack. She was awake, alert and oriented times three. She had a mini mental status examination; results 27/27. There is mild expressive aphasia on examination. She followed commands. There was a history of Bell's palsy with residual right nasal labial Lansing with good innervation on smiling that is unchanged. CT of the brain shows no acute process with old right basal ganglia infarct and mild prominence of the basilar tip concerning for aneurysm. Claimant had an acute onset of expressive aphasia upon awakening. The patient is 99% improved but not resolved, page 29. A November 20, 2013, admission note indicates that claimant fell and hit her head two days prior to the admission, page 19.

At Step 2, Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that had lasted or was expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Claimant suffered a severely restrictive physical or mental impairment. Claimant had reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the Claimant. There are insufficient laboratory or x-ray findings listed in the file to establish disability. The clinical impression was that Claimant was **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 restricted himself from tasks associated with occupational functioning based upon 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. Claimant's impairments do not meet severity or duration.

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 suffered severe mental limitations. There is **no** mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that Claimant suffered a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his 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 insufficient 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, s/he 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, an individual (age 58), with a high school education and an unskilled work history who is limited to sedentary or unskilled work is not considered disabled.**

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, State Disability Assistance and/or retroactive Medical Assistance based upon disability. The Department's decision must be upheld.

RECONSIDERATION DECISION AND ORDER

Upon reconsideration, 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 for State Disability Assistance based upon disability. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED.



Landis Y. Lain
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: 12/09/2014

Date Mailed: 12/09/2014

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

LYL/sw

cc:

