

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

IN THE MATTER OF:

[REDACTED]

Recon Reg. No.: 14-001327-RECON
Old Reg. No.: 14-001327
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: July 30, 2014
County: Jackson

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 Sandra Phillips along with Authorized Hearings Representative [REDACTED] of [REDACTED]. 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 September 10, 2013, Claimant filed an application for Medical Assistance and retroactive Medical Assistance as well as State Disability Assistance benefits alleging disability.
2. On January 15, 2014, the Medical Review Team denied Claimant's application stating that claimant could perform prior relevant work.

3. On January 17, 2014, the Department caseworker sent Claimant notice that the application was denied.
4. On April 10, 2014, L&S Associates filed a request for a hearing to contest the Department's negative action.
5. On June 19, 2014 the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had a right distal radius fracture was surgical fixation in June 2013. In December 2013 her blood pressure was not well controlled but she did not have any evidence of heart failure. She had full strength, low grip strength and normal dexterity. Gate was normal. She has crepitus in her knees but no effusions. Her mental status was basically unremarkable as she did not have any severe mental limitations. The medical evidence of record indicates that the claimant's condition improved and enough about all types of work for 12 months from the date of onset for surgery. Therefore MA-P is denied due to lack of duration under 20 CFR 416-4909. Retroactive MEP was considered in this case and is also denied. SDA is denied per BEM 261F the impairments would not preclude all work for 90 days from the date of application.
6. On September 24, 2014, the hearing was held.
7. Claimant is a 65-year-old woman whose date of birth is [REDACTED]. Claimant has a GED and a history of unskilled work.
8. Claimant alleges as disabling impairments: right wrist fracture, osteoporosis, hypertension, rheumatoid arthritis, anxiety and depression.
9. On August 6 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.
10. On August 28, 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.
11. On November 3, 2014, Supervising Administrative Law Judge C. Adam Purnell approved Claimant's request for a reconsideration stating: the ALJ erred in not considering the treatment records of Center for family health. The ALJ erred in not considering the longitudinal evidence to establish duration of the next considering the treatment records for Center for family health. The ALJ erred in not considering continuing limitations of fracture and the treatment records from allegiance orthopedist. The ALJ erred in reporting that the claimant is not engaged in substantial gainful activities of October 2013. Claimant's password is

unskilled and needs a heavy lifting and pursuant to Medical Vocational Rule 202.04 a finding of disability is directed.

12. 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 2013. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence in the file indicates that the claimant sustained a displaced right distal radius fracture and underwent surgical reduction in fixation June 23, 2013, page 83. On August 8, 2013 the claimant's x-rays were noted to demonstrate excellent healing and good position of the volar, page 59.

On [REDACTED], the claimant's blood pressure was 203/88, 200 and/85 and 213/89. She had a normal gait, page 19. Her cardiac examination was unremarkable. She had a well-heeled cicatrix on the palmar aspect of her wrist proximately consistent with surgical intervention. Muscle strength was 5/5 throughout. Reflexes were symmetrical at 4/5. Strength was full and dexterity was intact. Sensation was intact. There was no atrophy of the musculature seen. She did have some crepitus of her

knees during range of motion testing but there were no effusion of the joints, page 20. The conclusion was that claimant's range of motion is not affected and her hands still have full grip and full digital dexterity. In regards to her hypertension, there is no evidence of and/or in damage, although her blood pressure is significantly elevated in not well controlled. She was urged to seek immediate medical attention with her primary care practitioner for better control of her hypertension, page 22.

A mental status evaluation dated [REDACTED], show the claimant had no history of psychiatric treatment, page 28. She reported that she used marijuana when it is available to her. She appeared to be much older than his stated age. Her clothing was planned her grooming was below average, page 29. She's able to drive and go to stores as needed. She was pleasant, page 30. She was spontaneous, logical and had normal organization of thoughts. She reported that she had hallucinations. She was unable to give an example of them for saying that her husband told her that she was seeing things. She denied delusions, sessions and suicidal ideas, page 31. She reported that she is depressed sometimes, not very often. She reported that she is nervous at times and suspicious, page 32. Her affect was normal, page 35, and mood was normal. Diagnoses included tobacco use disorder – mild, cannabis use disorder – mild, and low income, page 36.

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 65), with a high school education and an unskilled work history who is limited to sedentary or unskilled work is not considered disabled. However, claimant did meet the Aged category for Medical Assistance benefits when she turned 65.**

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 or 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. The Department is ordered to assess claimant's eligibility for Medical Assistance benefits from the date of her 65th birthday forward.



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:

