

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-22671
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 17, 2014
County: Ottawa

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 3-way telephone hearing was held on June 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and authorized hearings representative [REDACTED]s. Participants on behalf of the Department of Human Services (Department) included [REDACTED] – Hearings Facilitator and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department of Human Services (the Department) properly deny Claimant's application for Medical Assistance (MA-P) or retroactive Medical Assistance (retro 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 28, 2013, Claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On October 28, 2013, the Medical Review Team denied Claimant's application stating that Claimant's impairments did not meet duration.
3. On November 4, 2013, the Department caseworker sent Claimant notice that her application was denied.

4. On January 9, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. On April 4, 2014, the State Hearing Review Team again denied Claimant's application.
6. On June 17, 2014, the hearing was held. At the hearing Claimant waived the time periods and requested to submit additional medical information.
7. On June 17, 2014, additional medical information was submitted and sent to the State Hearing Review Team for further review.
8. On June 30, 2014, the State Hearing Review Team again denied Claimant's application.
9. Claimant is a [REDACTED]-year-old [REDACTED] whose [REDACTED]. Claimant is 5'4" tall and weighs 240 pounds. Claimant is a [REDACTED] and [REDACTED]. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked in [REDACTED] as a [REDACTED] Claimant has also worked as a cashier [REDACTED]
11. Claimant alleges as disabling impairments: sarcoidosis, diabetes mellitus, fibromyalgia, anxiety, depression, posttraumatic stress disorder, sciatica, carpal tunnel syndrome, hypertension, acid reflux, arthritis, bipolar disorder, suicide attempts in circulation problems.

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 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 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 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 has not worked since [REDACTED] Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates Claimant testified on the record that she lives with her [REDACTED] and she is [REDACTED] but [REDACTED]. She has no children under 18 and no income. Her son supports her. She receives Food Assistance Program benefits and the Healthy Michigan Plan. Claimant does have a [REDACTED] and drives 2 to 3 times per day or 10 minutes to take her son to work. Claimant cooks three times per week and makes scrambled eggs and hamburgers. Claimant grocery shops one to two times per month and she needs help carrying heavy things. Claimant sweeps and washes dishes. Claimant watches television two hours per day and she does arts and crafts for a hobby. Claimant testified she can stand for 30 to 40 minutes of time and can sit for one hour. She can walk for 10 minutes or two blocks. She cannot squat. She can shower, dress herself, bend at the waist and mostly tie her shoes. She can sometimes touch her toes. Her knees hurt. Her level of pain on a scale from 1 to 10 without medication was 5 and with medication equals a 4. She is right-handed and her hands and arms are fine. She has circulation problems in her legs and feet. She smokes a half a pack of cigarettes per day. Doctors told her to quit and she is not in a smoking cessation program. She smokes marijuana 4 to 5 times per week.

A [REDACTED] dated [REDACTED], shows direct eye contact. She had normal range of affect. Her mood seemed mildly dysthymic. Her speech was normal. She had no suicidal ideation and no hallucinations. Diagnoses included [REDACTED] [REDACTED] daily use in borderline personality disorder, page 106. A [REDACTED] dated [REDACTED], show the Claimant reported excessive sleep. She has not had suicidal ideation but any intent or plan. She said she has a man's voice talking to her which is an old symptom. She has racing thoughts. Her axis I, axis II diagnoses remained the same. Her axis V GAF was 55, page 119.

On [REDACTED], the Claimant's lungs were clear to auscultation, page 12. She had no clubbing, cyanosis or edema. She had influenza, page 13. The Claimant was seen in the [REDACTED] on [REDACTED] 13 with chest pain, page 14. On examination, her lungs were clear and equal bilaterally. Her power and sensation were intact. Her examination was unremarkable, page 16. She had to negative sense of cardiac enzymes in a normal stress test. Impression was non-cardiac chest pain, page 14.

A [REDACTED] dated [REDACTED] indicates that the clinical impression is that Claimant is deteriorating. She could occasionally carry 10 pounds or less and never carry 20 pounds or more. She can stand or walk less than two hours in an eight hour workday and sit less than five hours in an eight hour workday. She can never use her upper extremities repetitive action and she can never every foot or leg controls. The diagnosis was severe fibromyalgia. Share mental limitations in the memory, sustaining concentration, follow simple directions. An [REDACTED] indicates the Claimant axis V GAF is 45. A [REDACTED] report indicates that Claimant's drug screen was positive for [REDACTED] a but no evidence of [REDACTED]. A [REDACTED] indicates the Claimant's axis V GAF at [REDACTED] was 38. She was alert and oriented times three. Concentration, short-term and long-term memory was intact. Insight and judgment appear to be developing.

The [REDACTED] of record does not support the presence of severe physical limitations. The [REDACTED] offered by the Claimant's treating source are from [REDACTED] and unsupported by objective medical evidence. However even if Claimant were limited to sedentary work, she would still not be considered disabled based upon her age and work history. Drug and alcohol abuse is present. The Claimant is noted for daily [REDACTED] and admitted on the record that she smokes marijuana approximately five times per week.

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 insufficient 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.

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, 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, a younger individual (age [REDACTED] with a [REDACTED] and an unskilled work history who is limited to light work is not considered disabled.**

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that Claimant has a history of **tobacco, drug, or alcohol abuse**. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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

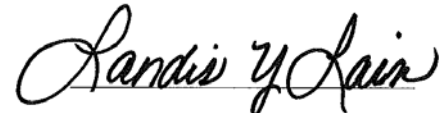
If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department 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 retroactive 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 or retroactive Medical 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 Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/21/14

Date Mailed: 7/25/14

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the Claimant;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

2014-22671/LYL

The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LYL/tb

cc:

