

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2007-13682
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 1, 2007
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on August 1, 2007. Claimant was represented by [REDACTED]

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA).

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 October 26, 2006, claimant applied for MA. She submitted her medical records for department consideration.

(2) On December 15, 2006, the Medical Review Team (MRT) denied claimant's application. Department Exhibit (Department) A.

(3) On December 28, 2006, the department sent claimant written notice that her application was denied.

(4) On March 26, 2007, the department received claimant's timely request for hearing.

(5) On June 25, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) On August 1, 2007, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived her right to a timely hearing decision. October 18, 2007, following review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 10/18/07. On or about August 2008, good cause was found to reopen the record for additional medical evidence. On August 21, 2008, the SHRT denied claimant's application for the 3d time. SHRT Decision, 8/21/08.

(7) Claimant asserts disability based on impairments caused by perforated bowel, fibromyalgia, bad back, carpal tunnel syndrome, depression, and brain lesions.

(8) Claimant testified at hearing. She is 37 years old, 4' 10" tall, and weighs 135 pounds. She completed the 12th grade and has completed some college credits. She is able to read, write and perform basic math. She is able to care for her needs at home.

(9) Claimant's past relevant employment has been as a truck driver, waitress, job skills instructor, and factory worker.

(10) On or about October 2006, claimant underwent gynecological surgery during which a perforated colon occurred. The tear was repaired and subsequent testing revealed the perforation was sealed close. Department A, pages 114-118.

(11) March 23, 2005, claimant underwent neuromuscular electrodiagnosis testing. The prepared report indicates a normal test with some evidence of very mild right carpal tunnel syndrome with no evidence of cervical radiculopathy or brachial plexopathy. Department A, page 34. On August 6, 2003, claimant underwent x-rays of her lumbar spine and both knees that revealed a normal lumbar spine and negative right and left knees. Department A, page 32. On March 28, 2005, claimant underwent an MRI of the cervical spine that revealed a mild concentric disc bulging at C5/6. Marrow signal is maintained. Craniocervical junction is normal. Cord signal is maintained. Intervertebral foramina are reasonably well maintained. No evidence of discal herniation. Department A, page 31. On April 15, 2005, claimant underwent an MRI of the lumbar spine. The prepared report states a minimal posterior disc bulge at L4/5. No evidence of disc herniation or protrusion. No evidence of recess stenosis or canal stenosis. Conus medullaris has normal signal intensity. Lumbar segments are intact. Department A, page 30.

(12) On August 9, 2007, claimant underwent a physical examination. Treatment notes state the following, in pertinent part: Mood and affect are appropriate and normal; cranial nerves, speech, memory, recall, and cognition are grossly intact. Pinprick is +2 from L2 through S1 with +2 reflexes at the patellas and Achilles with down going plantar responses bilaterally; Patrick's, SLR, Ober's and femoral nerve stretch testings are negative bilaterally; motor strength is at least 4/5 in the bilateral quadriceps, hamstrings, tibialis anterior, extensor longus, gluteus maximus, and gastrocnemius. Doctor notes that claimant moves slowly with an antalgic gait. Lumbar

flexion in 45 degrees and extension is 0. Claimant has pain to palpitation over all major muscle groups. [REDACTED]

(13) EMG conducted on September 21, 2007 suggests left L5 radiculopathy not corroborated by MRI conducted September 12, 2007. Claimant was to undergo epidural block treatment. Claimant A.

CONCLUSIONS OF LAW

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; MSA 16.490(15). Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record establishes that claimant has very mild right carpal tunnel syndrome, a mild disc bulge at C5/6 with no evidence of disc herniation, and a minimal disc bulge at L4/5. Finding of Fact 11. Medical examination by an orthopedic specialist in August 2007 revealed has normal muscle tone, strength, and reflexes. Cranial nerves are intact. EMG suggested possibility of left L5 radiculopathy to be treated with epidural block. Finding of Fact 11-13.

At hearing, claimant testified that she is unable to complete activities of daily living and can sit/stand for only a few minutes. In August 2007, her family practitioner opined that claimant requires a walker to ambulate and has severe pain. Neither claimant's testimony nor her family practitioner's opinion is supported by objective medical evidence. Claimant's internist indicates that a spinal MRI was conducted during August 2006 (Claimant A, Medical Examination Report, physician signature illegible, form is undated); however, the MRI report was not submitted. As discussed above, the most recent MRI report is from 2005 and indicates only two mild disc bulges. EMG from 2007 indicates left L5 radiculopathy to be treated with epidural block. The record indicates that claimant may see a rheumatologist. No objective medical evidence was submitted related to treatment by a rheumatologist. Accordingly, the objective medical evidence is not sufficient to support a finding of disability due to musculoskeletal impairments. Finding of Fact 11-13.

The objective medical evidence indicates that claimant's perforated colon was successfully repaired during her gynecological surgery and is completely closed. Finding of Fact 10. Claimant's family practitioner indicates that she has severe depression (Claimant A, Medical Examination Report, DR. Pruka, 8/6/07). Claimant's orthopedist observed her mood and affect to be appropriate and stable. Finding of Fact 12. No psychiatric evaluation or assessment was submitted for consideration. Accordingly, the record is not sufficient to support a finding of disability due to mental illness or bowel perforation.

Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe physical or mental impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law. See discussion at Step 2, above.

At Step 4, Claimant's past relevant employment has been as a truck driver, waitress, job skills instructor, factory worker. As discussed at Step 2, above, the objective medical evidence of record is not consistent with claimant's assertions of severe pain, limited range of motion, and weakness. No objective medical evidence was submitted to establish that claimant has a severe mental impairment or a physical impairment due to bowel perforation. Finding of Fact 10-12. See discussion at Step 2, above. Accordingly, the record is not sufficient to establish that claimant is not capable of performing the duties required by her past relevant employment.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has severe mental and/or physical impairments that prevent her from performing the duties of her past relevant employment for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 4.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the objective medical evidence of record does not establish a severe physical or mental limitation or impairment that has lasted or is expected to last 12 months or more. See discussion at Step 2, above. Finding of Fact 10-11.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing “at least” simple, light work tasks. Considering claimant’s vocational profile (younger individual, high school graduate or more, and history of unskilled work) and relying on Vocational Rule 202.20, claimant is not disabled. Accordingly, claimant is disqualified at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for medical assistance based on disability and the department properly denied her application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that claimant has not established disability for purposes of Medical Assistance.

Accordingly, the department's action is hereby UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 12, 2009

Date Mailed: May 13, 2009

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 receipt 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.

JAB/db

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