

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: 2007-16313

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 7, 2007

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. 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 [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) June 20, 2006, claimant applied for MA and retro-active MA. Claimant submitted medical records for department consideration.

(2) October 27, 2006, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) November 6, 2006, the department sent claimant written notice that the application was denied.

(4) January 3, 2007, the department received claimant's timely request for hearing.

(5) April 4, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) June 7, 2007, the in-person hearing was held. Prior to the closing of the record, claimant's representative requested the record be left open for additional medical evidence. The representative waived claimant's right to a timely hearing decision. September 14, 2007, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 9/14/07.

(7) Claimant asserts disability based on impairments caused by mental illness, arthritis, injury to right hip, pulmonary problems, and heart disease.

(8) [REDACTED]

(9) Claimant's past relevant employment has been as a cashier and grill cook.

(10) September 19, 2006, claimant underwent x-ray of the cervical spine with revealed osteoarthritis. October 2, 2006, claimant underwent MRI of the cervical spine which revealed stable appearance of cervical spine with demonstration of disc-osteophyte complex at C5-C6 with mild compression of the dural sac, though spinal cord is normal caliber and contour; there is narrowing of the left neural foramina at this level with compression of the exiting nerve root.

Claimant A.

(11) May 16, 2006 medical treatment records indicate claimant presented to hospital believing that she was having a heart attack. Medical testing determined that claimant had GERD. Department A, Treatment notes, 5/16/06. Cardiac testing revealed no evidence of heart disease. Department A, Report, 5/16/06. May 25, 2006, claimant was admitted to hospital and treated for obstructive and restrictive pulmonary disease with resultant hypoxia. She was discharged on June 1, 2006. Department A, Report, June 1, 2006. Medical treatment records from June 8, 2006 indicate claimant was treated for a pulmonary embolism in the left lower lobe pulmonary artery. Department A, Report, 6/8/06. Medical testing conducted on June 9, 2006 revealed no evidence of deep vein thrombosis of the bilateral lower extremities. Department A, Report, 6/9/06. June 27, 2006 medical treatment records indicate claimant has a hematoma on the right hip. Department A, Treatment notes, 6/27/06. September 13, 2006, claimant's physician completed a Medical Examination Report (DHS-49) following physical examination on August 26, 2006. Doctor indicates diagnoses of GERD and insomnia. Physical exam was normal with no indication of restrictions or limitations, with the exception of occasional lifting of up to 10 pounds. Department A, Medical Examination Report, 9/13/06.

(12) On or about March 2007, claimant began mental health treatment. Initial evaluations indicate claimant is depressed. She was oriented X3, bright, articulate, and thorough. She stated that she had occasional suicidal ideation and possible auditory hallucinations. Later treatment records indicate claimant is oriented x3 and spontaneous with mobile affect and congruent mood. She has fair insight and judgment. Claimant reports depressive and obsessive thoughts. May 2007 treatment records indicate claimant's medications have resulted in better mood and decreased anxiety. June 11, 2007, claimant's psychiatrist completed a Psychiatric/Psychological Examination report following exam on May 3, 2007. Doctor indicates diagnosis of major depression, recurrent. GAF was [REDACTED] Claimant B.

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. 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 indicates that claimant has osteoarthritis of the cervical spine with disc-osteophyte complex at C5-6. There is mild compression of the dural sac, but spinal cord is normal caliber and contour. There is narrowing of the left neural foramina at this level with compression of the exiting nerve root. Finding of Fact 10. Objective medical evidence of record establishes that claimant had a pulmonary embolism during June 2006. She was diagnosed with GERD and obstructive and restrictive pulmonary disease. The record contains no objective medical evidence to establish claimant has severe limitations or impairments due to these conditions. Medical treatment report from September 2006 indicates a normal physical exam, with the exception of a lifting limitation of 10 pounds occasionally. Finding of Fact 11.

At Step 2, the objective medical evidence indicates claimant was diagnosed with major depression in March 2007. She was oriented X3, bright, articulate, and thorough with fair

insight and judgment. She stated that she occasionally had suicidal ideation, possible auditory hallucinations, and depressive and obsessive thoughts. May 2007 treatment records indicate claimant's medication has resulted in better mood and decreased anxiety. June GAF was assessed at 49, indicative of serious to moderate symptoms or difficulties. Finding of Fact 12; DSM IV, 1994. June 11, 2007, claimant's social worker completed a Mental Residual Functional Capacity Assessment (FIA-49-E) and opined that claimant is markedly limited in 10 areas of functioning. Claimant B. These opinions are not consistent with treatment records and so must be given less legal weight.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe 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.

At Step 4, claimant's past relevant employment has been as a cashier and grill cook. The objective medical evidence of record establishes that claimant was successfully treated for pulmonary embolism in May 2006. She has obstructive and restrictive pulmonary disease, but no limitations or restrictions are indicated in the objective medical evidence of record due to this condition. She has a disc-osteophyte complex at C5-6 with no cord compression or change of signal. She has narrowing of the left neural foramina with compression of the exiting nerve root. Claimant's physician indicates claimant has no limitations except for limiting lifting to 10 pounds occasionally. The objective medical evidence of record establishes that claimant was treated for depression in the spring of 2007. She was prescribed medication that resulted in improved mood and reduced anxiety. Throughout her treatment, she was oriented x3, bright,

articulate, and spontaneous. She indicated possible auditory hallucinations and depressive, obsessive thoughts during her treatment. Her judgment and insight were assessed as fair. See discussion at Step 2, above. Finding of Fact 10-12.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. 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 indicates that claimant has depression which is improving with treatment. In June 2007, her [REDACTED] of moderate to serious symptoms. Claimant has a compressed nerve in her cervical spine. She has GERD and insomnia. See discussion at Step 2, above. Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary work activities. Considering claimant's Vocational Profile (younger individual, high school education and history of unskilled work) and relying on Vocational Rule 201.18, claimant is not disabled. Therefore, claimant is disqualified from receiving disability 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 claimant's application.

DECISION AND ORDER

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

Accordingly, the department's action is HEREBY UPHELD.

/s/

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

Date Signed: January 5, 2009

Date Mailed: January 6, 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.

JBB

[REDACTED]

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