

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: 2007-18668

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 31, 2008

Bay 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 January 31, 2009. 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) 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 May 25, 2007, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

- (2) July 2, 2007, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

- (3) July 5, 2007, the department sent claimant written notice that the application was denied.

- (4) July 13, 2007, the department received claimant's timely request for hearing.

- (5) October 11, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

- (6) January 31, 2008, the in-person hearing was held. Prior to the close of the record, claimant submitted additional medical records. Claimant waived the right to a timely hearing decision. February 8, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 2-8-08.

- (7) Claimant asserts disability based on impairments caused by a bad back and carpal tunnel syndrome.

- (8) Claimant testified at hearing. Claimant is 59 years old, 5'1" tall, and weighs 165 pounds. Claimant completed high school and 96 college credits in nursing and business. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

- (9) Claimant's past relevant employment has been as an administrative assistant.

- (10) August 9, 2006, claimant underwent an independent medical examination and a narrative report was prepared. In 1990, claimant had surgery to her neck after injuring it in a car accident that took place in 1966. Claimant stated she had surgery on her lower back in 1981, but was not sure what procedure was performed. Physical exam revealed claimant sitting comfortably in a chair in no obvious distress. Affect, dress, and effort were appropriate. Mental status appeared normal. Blood pressure was 118/70. Visual acuity in right eye was 20/25, left eye

was 20/30 with corrective lenses. Neck was supple without masses. Breath sounds were clear to auscultation and symmetrical with no accessory muscle use. Heart had regular rate and rhythm without enlargement and with normal S1 and S2. Abdomen had no organomegaly or masses. Bowel sounds were normal. There was no clubbing, cyanosis, or edema detected. Peripheral pulses were intact. Back and neck were nontender to palpation. Cervical spine exhibited limited range of motion. Claimant complains of pain in her back with lumbar spine motions as well as with all hip motions, including forward flexion of the hip bilaterally to 60 degrees. There was no evidence of joint laxity, crepitus, or effusion. Grip strength remained intact. Dexterity was unimpaired. Claimant had no difficulty getting on and off exam table, mild difficulty heel and toe walking, mild difficulty squatting and arising, no difficulty balancing, and was unable to hop. Range of motion in all joints was within normal limits with the following exceptions: cervical flexion was reduced to 20 degrees; cervical extension was reduced to 20 degrees; cervical right lateral flexion was reduced to 30 degrees; cervical left lateral flexion was reduced to 30 degrees; cervical left and right rotation were reduced to 30 degrees; dorsal lumbar flexion was reduced to 45 degrees, left and right hip abduction was a full 40 degrees but with pain; hip forward flexion was reduced to 60 degrees; backward extension was reduced to 0 on the left. Cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch. Reflexes were intact and symmetrical. Romberg testing was negative. Claimant walks with a normal but slow gait without the use of an assistive device. Tinel's sign and Phalen's maneuvers are negative. Straight leg raising was negative in the seated and supine positions. The report indicates the following conclusions: degenerative disc disease; hypertension well controlled; carpal tunnel syndrome, full fist with full grip without evidence of digital dexterity loss; prolapsed bladder. Department Exhibit A, pgs 100-104. August 9, 2006, claimant underwent x-rays of the cervical

and lumbar spine that revealed the following: cervical spine has mild reversal of cervical lordosis secondary to mild retrolisthesis of the views of the C3 and 4 vertebral bodies. Vertebral height is otherwise satisfactory. There is very advanced spondylosis between C4 and T1 with mild changes of a similar nature at C2-3. The head is tilted to the left giving the cervical spine a mild dextroscoliotic posture. End plate spurring is greatest between C4 and 6. There is mild foraminal encroachment between C5 and 7 bilaterally and the C2-3 on the left. Dens and prevertebral soft tissues are intact. Lumbar vertebral height is satisfactory. There is grade I anterior slippage of L4 on L5. There is advanced spondylosis at L5-S1 with moderate changes of a similar nature at L4-5. The remaining disc spaces are well maintained. There is facet arthrosis between L4 and S1 bilaterally. The changes appear slightly more marked on the left. No other abnormalities affecting the posterior elements are observed. The S1 joints are slightly narrowed and there is mild marginal spurring and sclerosis inferiorly. Department Exhibit A, pg 105.

September 27, 2007, claimant underwent MRI of the cervical spine that revealed demonstrated manifestations of previous fusions at the C3-4 level; relatively mild central canal stenosis is noted at C4-5 related to diffuse annular bulging and posterior facet degeneration; similar configuration is noted at C5-6; more caudally, the central and lateral canals appear reasonably patent; no evidence of signal abnormality in the cord; some reversal of the normal cervical lordosis with apex at C5-6; lateral canals at C4-5 and C4-6 are difficult to evaluate; this is viewed with at least some suspicion for neural foraminal encroachment. Claimant Exhibit A, Report, 9-27-07.

(11) October 24, 2007, claimant was examined by a neurologist and treatment notes were prepared. Neurologic exam shows claimant is awake, alert, and oriented x 4. Moves all four extremities 5/5. Strength appears to be intact throughout. She has decreased reflexes throughout.

She has no Babinski, no Hoffman or clonus. Of note, slight decrease in her hand grasp on the left and the right approximately 4+/5. No bowel or bladder complaints. She has normal gait, although difficult at times due to low back pain. Doctor advises conservative management. Claimant Exhibit A, Report, 10-24-07.

(12) November 6, 2007, claimant was examined by an orthopedic surgeon and underwent an EMG. Doctor indicates that claimant has marginal early and minimal carpal tunnel symptoms of the left essentially less than on the right. She has a persistently large ganglion cyst of the volar aspect of the right wrist that persists but is not painful. Doctor recommends that claimant wear splints at night. Claimant Exhibit A, Report, 11-06-07.

(13) November 27, 2007, claimant underwent a neurologic evaluation and physical exam. A report was prepared that indicates the following: head is normocephalic with symmetrical features; neck has decreased range of motion; no carotid bruits; trachea is midline; no thyromegaly and no lymphadenopathy; eyes are evenly aligned; extraocular movements are intact; pupils are equal and reactive to light and accommodation; movement of tongue, soft pallet, and uvula are symmetric; lungs are clear to auscultation bilaterally without adventitious breath sounds; no CVA tenderness; heart has regular rate and rhythm with normal S1 and S2; pedal pulses are 2+; nail beds are pink with immediate capillary refills; abdomen is soft and nontender; decreased cervical range of motion and decreased lumbar range of motion; symmetry of muscle mass, tone, and strength; ganglion cyst noted over right wrist. Neurological exam revealed claimant to be alert and oriented x 3. Claimant appears to have intact sensation to light touch. Cerebellar coordination appears intact with finger to finger and rapid alternating movements. Claimant has somewhat antalgic gait. Deep tendon reflexes are symmetrical. Straight leg raise is positive. Cranial nerves 2-12 are grossly intact. Babinski is downgoing.

There is weakness in grasp and weakness in pinch. Positive Tinel's and Phalen's signs at the wrist bilaterally. Claimant has difficulty walking on tip toe and heels and difficulty with heel to toe walking. Claimant is able to squat and recover. Claimant Exhibit A, Report, 11-27-07.

December 17, 2007, claimant was again examined by a physician. Exam revealed claimant to be alert and oriented. Vital signs are stable. Heart has regular rate and rhythm. Lungs are clear to auscultation bilaterally. There is decreased cervical range of motion. There is pain that radiates into her shoulders. There is decreased lumbar range of motion. Straight leg raise is positive bilaterally. There is weakness of grasp and weakness of pinch. There is positive Tinel and Phalen signs at the wrists bilaterally. Claimant Exhibit A, Report, 12-17-07.

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 is post cervical fusion and has significantly reduced range of motion in her neck. Claimant has degenerative changes in her lumbar spine with accompanying reduced range of motion and pain. Claimant has mild carpal tunnel syndrome resulting in weakness of grasp and weakness of pinch. She has an asymptomatic ganglion cyst on her wrist. Finding of Fact 10-13.

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 an administrative assistant. See discussion at Step 2 above. Finding of Fact 9-13.

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, see discussion at Step 2 above. Finding of Fact 10-13.

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 (advanced age, high school graduate or more, and history of skilled

or semi-skilled work skills transferable) and relying on Vocational Rule 201.07, 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.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.

- (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section

shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5 above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied the 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 and State Disability 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: December 4, 2009

Date Mailed: December 8, 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.

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