

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: 2007-19043

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 28, 2007

Ingham 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, a in-person hearing was held on November 28, 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) 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) September 28, 2006, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

(2) April 13, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) April 18, 2007, the department sent claimant written notice that the application was denied.

(4) July 12, 2007, the department received claimant's timely request for hearing.

(5) October 3, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) November 28, 2007, the in-person hearing was held. Prior to the closing of the record, the claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. July 3, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 7/3/08.

(7) Claimant asserts disability based on impairments caused by heart disease, diabetes, herniated disc, hypertension, depression and anxiety.

(8) Claimant testified at hearing. Claimant is 44 years old, 5'5" tall, and weighs 197 pounds. Claimant completed 9th grade and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. She cares for her needs at home.

(9) Claimant's past relevant employment has been as a caregiver, owner of a cleaning company, cashier, waitress, and other odd jobs.

(10) On or about September 20, 2006, claimant underwent insertion of coronary stents. Department A, pages 39-40. December 5, 2006, claimant was admitted to hospital due to uncontrolled diabetes, chest pain, hypercholesterolemia, hypertension, and chronic back pain. Diagnostic cardiac testing revealed small area of ischemia in the anterior wall and small infarctions of the inferior wall, mild wall motion abnormality. Heart catheterization showed

patent stent in proximal to mid LAD, RCA, and right PDA, normal left main and circumflex, left ventricular functions 50% with mild inferior hypokinesis, there is no significant change in the patient's coronary artery with stents remaining patent, Chest x-ray unremarkable. Claimant's condition was stabilized with medication and she was discharged on December 9, 2007.

Department A, pages 11-18.

(11) November 20, 2007, claimant underwent physical examination complaining of high blood glucose readings. Treatment notes indicate that patient lacks abnormal heart sounds, HEENT is within normal limits, abdomen is normal, neck is unremarkable, neurologic exam is normal, vascular exam is normal, no enlarged lymph nodes, cardiovascular exam is normal with normal S1 and S2, heart has regular rate and rhythm, vascular pulses are 2/4 throughout with adequate capillary refill, there was no clubbing, cyanosis, or edema of the lower extremities, there was no joint effusion, crepitus, or deformities, there is no swelling, dislocation of muscles, joints, bones, etc., neuro/psychiatric appear normal as do extremities and integumentary. Doctor does not indicate diagnoses. Claimant A, pages 4-7.

(12) December 18, 2007, claimant was examined a second time by her family physician. Claimant's blood glucose reading was 464; otherwise exam was within normal limits. Physical exam was same on January 31, 2008, . Claimant A, pages 8-15.

(13) March 14, 2007, claimant underwent an independent psychological exam. A narrative report was prepared that states AXIS I diagnoses of major depressive disorder, recurrent, generalized anxiety disorder, with intermittent panic attacks and agoraphobic features, and reading disorder. Claimant was cooperative, but extremely anxious and hypervigilant. Claimant reported suicidal thoughts, but denied suicidal intent. Claimant showed evidence of severe, chronic depression characterized by a very depressed mood, pessimism, despair, reduced

capacity for pleasure or happiness, diminished self-esteem, feelings of guilt and being punished, reduced sense of purpose and direction in her life, and severe social and interpersonal isolation and distress. Claimant exhibited evidence of chronic, diffuse anxiety. Claimant was oriented X3, with borderline fund of information, abstraction, judgment, and calculation. Claimant reports having no friends, social contacts. She no longer is active in bowling and other activities, preferring to stay in her room and listen to music and crochet. Department A, pages 19-22.

(14) March 5, 2007, claimant underwent an independent physical exam. A report was prepared that indicates an exam within normal limits, with the exception of tenderness over the thoracic paraspinal muscle. Range of motion is intact and there are no neurologic deficits. Doctor states there is no evidence of neuropathy. Claimant reports chest pain typical of angina. Doctor opines claimant should not lift more than 15 pounds. Department A, pages 23-26.

(15) July 4, 2004 MRI of lumbar spine revealed degenerative joint disease at L1 and 2 through L3-L4 with no evidence of central canal stenosis or neuroforaminal narrowing, no definitive nerve impingement was seen. Department A, page 44. March 29, 2006, claimant underwent MRI of the cervical spine that revealed midline disc herniation and osteophyte formation at the T9-10 level causing mild to moderate stenosis, but without cord compression or nerve root compression. Department A, page 46.

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).

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

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 claimant underwent placement of coronary stents in September 2006. Physical exams following surgery revealed normal physical exam with the exception of some mild tenderness in her lumbar spine and

elevated blood glucose. MRI revealed degenerative joint disease at L1 and L2 through L3-L4 with no evidence of central canal stenosis or neuroforaminal narrowing. A small midline disc herniation and osteophyte at T9-10 caused mild to moderate stenosis without cord or nerve root compression. Finding of Fact 10-12, 14-15.

At Step 2, the objective medical evidence of record indicates that claimant has chronic, very severe depression with loss of interest in almost all activities, feelings of guilt and worthlessness, thoughts of suicide, and resulting in marked restriction of daily activities and marked difficulty in maintaining concentration. Finding of Fact 13.

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

At Step 3, claimant's impairments appear to meet or equal Listing 12.04 A & B.

At Step 4, claimant's past relevant employment has been as a caregiver, owner of a cleaning company, cashier, waitress, and doing other odd jobs. The objective medical evidence of record establishes that claimant has severe cognitive limitations that prevent work. See discussion at Step 2, above. Finding of Fact 13.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has cognitive 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 not 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 heart disease and is post placement of stents. She has mild to moderate degenerative changes in her back that do not impinge spinal cord or exiting nerve roots. Claimant has severe, chronic depression that appears to meet or equal Listing 12.04 A, B. See discussion at Step 2, above. Finding of Fact 10-15.

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 activities. However, claimant's cognitive impairments appear to be severe and chronic within the meaning of the statute. Therefore, claimant is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements to qualify for Medical Assistance based on disability.

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 has severe impairments that prevent work for 90 days or more. Therefore, claimant meets the disability requirements to qualify for SDA based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance and State Disability Assistance effective the month of her application.

Accordingly, the department's action is HEREBY REVERSED. The department is to initiate a determination of claimant's eligibility for MA and SDA in compliance with this decision and order and department policy. Medical review is set for March 2010. Claimant shall seek, fully participate in, and comply with psychiatric treatment. She shall provide treatment records at review. Failure to do so may affect eligibility.

/s/

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

Date Signed: April 7, 2009

Date Mailed: April 9, 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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