

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: 2008-22681

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 5, 2008

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 telephone hearing was held on November 5, 2008. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 December 7, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 12, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On March 18, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On June 3, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 9, 2008, the State Hearing Review Team again denied claimant's application stating that claimant's impairments were non-severe.

(6) The hearing was held on November 5, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) The record was left open until December 5, 2008 to allow for the submission of the additional medical information.

(8) No additional medical information was submitted and this Administrative Law Judge closed the record on November 16, 2009 and made a decision in this case.

(9) On the date of hearing, claimant was a 31-year-old woman whose birth date is [REDACTED]. Claimant was 5'2" tall and weighed 125 pounds. Claimant attended the 12th grade and did have a GED. Claimant was able to read and write and did have basic math skills.

(10) Claimant last worked in 1995 as a cook and a prep cook.

(11) Claimant alleges as disabling impairments: asthma, right breast cyst, as well as a sickle cell anemia.

CONCLUSIONS OF LAW

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).

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).

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 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 has not worked since 1995. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] emergency and pre-hospital documentation record indicates that claimant came to the hospital with a chief complaint of a headache, migraine type that had lasted for 4 days. The physical examination indicated that claimant's vital signs were reviewed and were stable. The claimant was well-nourished, well-developed, alert, and oriented. On [REDACTED], claimant came to the hospital and was a well-developed, well-nourished, 30-year-old female in no acute distress. She did not appear to be ill or toxic. Her pupils were round and reactive to light. EOMs were intact. Neck was supple with full range of motion. There was no midline cervical tenderness. There was no palpable cervical, submandibular, submental, or preauricular

adenopathy. Her carotid pulses were +2 with no bruit. Motor strength was 5/5 with sensations intact. Remaining exam was unremarkable. (p. 22) On [REDACTED], claimant came to the emergency department for an acute chronic right-sided breast abscess with fistulas tract and inverted right nipple. There was clear drainage. There was no area of fluctuance. No crepitus, redness, or streaking. No axillary adenopathy was appreciated. Her lungs were clear. Her heart was regular. Her abdomen was soft, non-distended, and non-tender. (p. 31) On [REDACTED], claimant came to the emergency room for hives and was given Benadryl and a dose of prednisone and discharged home in stable condition. (p. 33) On [REDACTED], the claimant presented at the hospital for a headache. She was sitting in a bright room, talking loudly with her friend. Her head was atraumatic. No cranial facial swelling. No temporal tenderness. In her eyes the pupils were equal, round, and reactive to light. Extraocular movements were intact. ENT: Oropharynx was moist and pink. Speech was clear. Neck was soft, supple, and non-tender. Lungs were clear and equal bilaterally. Heart was regular. Abdomen was non-tender. The claimant was alert and oriented. Cranial nerves II-XII were intact. She was ambulatory with a steady gait. He was provided with Toradol and Benadryl with good resolution of symptoms and was discharged. (p. 37) Claimant had a diagnostic radiology examination for shortness of breath and recent pneumonia and the findings were cardiomeastinal silhouette, pulmonary vascularity, lungs, and pleura appeared normal. (p. 43) On [REDACTED], she presented at the hospital for asthma and shortness of breath. On general physical examination she was an alert, attentive female. Her vital signs were normal. Her HEENT, her pupils were equal. There was no conjunctival injection. Nares were clear. Mucous membranes were moist. There was no throat exudate. TMs were normal. Neck was supple. There was no adenopathy. Cardiac had regular rate and rhythm. No murmurs, rubs, or gallops. The chest had diffuse expiratory wheezing, some

scattered rhonchi. No egophony. Abdomen was soft and non-tender. Extremities were warm and pink with no edema. Neurologically, she was alert and attentive. (p. 44) On [REDACTED] she presented to the hospital and was treated for upper respiratory infection and a urinary tract infection. (p. 46)

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. This Administrative Law Judge finds that there is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. There are no laboratory or x-ray findings which indicate that claimant has a severe impairment. 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.

There is no evidence in the record that claimant suffers any mental limitations. The claimant testified that she does not have any mental impairment. There is no mental residual functional capacity assessment in the record. 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. Claimant's past relevant work was light as a cook and a prep cook. Claimant testified on the record that she lives with her husband and that he supports her and that she doesn't drive and her husband takes her places or she catches the bus. Claimant testified she does cook one time per week and cooks things like pasta and veggies. Claimant testified she doesn't grocery shop or clean her home, but she does do dishes and makes the bed. Claimant testified that she can walk 2-3 blocks, stand for 10 minutes, and has no limits on her ability to sit. Claimant is able to shower and dress herself and can squat, bend at the waist, tie her shoes sometimes, and touch her toes. Claimant testified the heaviest weight she can carry is 20 pounds and her purse weighs about 5 pounds. Claimant testified that she is right-handed and there is nothing wrong with her hand and arms and that her legs and feet are also fine. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 0-4. Claimant testified that she does smoke a pack of cigarettes every 4 days and her doctor has told her to quit and she is not in a smoking cessation program. There is insufficient objective medical 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, she 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 does retain bilateral manual hand dexterity. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment of 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.

It should be noted that claimant does continue to smoke despite the fact that her doctor has told her to quit smoking and she is not in a smoking cessation program. 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).

Under the Medical-Vocational guidelines, a younger individual (age 31), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable

to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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, retroactive Medical Assistance and State Disability 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.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 8, 2010

Date Mailed: February 8, 2010

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.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

LYL/vmc

cc:

