

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: 2008-26892
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 5, 2008
Oakland 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 March 20, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 21, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 203.25 and 202.17.

(3) On May 23, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On June 9, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 13, 2008, the State Hearing Review Team again denied claimant's application stating that claimant had a non-severe impairment per 20 CFR 416.920(c).

(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 for thirty (30) days but no new information was submitted and this Administrative Law Judge waited approximately one year and closed the record and decided to make a decision.

(8) On the date of hearing, claimant was a 46-year-old woman whose birth date is [REDACTED]. Claimant was 5' 4" tall and weighed 190 pounds. Claimant attended the 8th grade and had no GED. Claimant was able to read and write and did have basic math skills.

(9) Claimant last worked doing dishes in August 2008 and helping out a person and she also worked in a factory as a press operator for 20 years.

(10) Claimant alleges as disabling impairments: ACL tear, hypertension, depression, a numb right leg, bad back, insomnia, and a bipolar disorder.

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 August 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED]

[REDACTED] assessment done [REDACTED] indicates that claimant was driven to the appointment

by her brother. She was 5'4" and weighed 180 pounds. She was obese. Her posture was upright and her gait was normal. She was dressed casually and groomed neatly. No acute distress or involuntary movements were observed during the meeting. She was oriented to time, person, and place and stated that the date was [REDACTED], she was in [REDACTED], and that she was seeing a doctor. The claimant recited 4 of 6 digits forward and 4 digits backward. She recited her date of birth, address, and telephone number accurately. She named 6 U.S. presidents: Lincoln, Jefferson, Ford, Carter, Bush, and Clinton. She named 6 states in the United States: Michigan, Ohio, Utah, North Dakota, South Dakota, and Hawaii. She was unable to spell correctly "world" either forward or backward and she recalled 3 out of 3 objects after 5 minutes. Her calculations up to 30 were good as were her serial sevens. To the proverb, "don't cry over spilled milk", she stated it's not that bad and to the proverb, "people in grass houses shouldn't throw stones", she stated somebody should not be talking about somebody else. In similarities and differences between an airplane and a bicycle she stated an airplane has wings and they both have wheels, and the similarities and differences between a tree and a bush, she stated a tree is tall and a bush is short and they both have leaves. In judgment when asked what she would do if she found an addressed envelope on the ground with a stamp on it, she stated she would mail and when asked what she would do if she experienced a fire while in a movie theater she stated go to the nearest exit. Her GAF was 50. Her prognosis was guarded and she was diagnosed with Axis I bipolar disorder, alcohol abuse, history of cannabis abuse.

On [REDACTED], claimant was 5'4" tall and weighed 183 pounds. Her blood pressure was 120/84. Her pulse was 76 and her respirations were 16. Her temperature was 98.1. On [REDACTED], claimant was brought to the hospital because she had ingested many pills such

as Vicodin and was drunk and had shortness of breath. Her EKG showed normal sinus rhythm. She was admitted to the intensive care unit for acute respiratory failure, ventilator support, acute renal failure, and right middle lobe opacity, alcohol abuse, possible substance abuse, leukocytosis and indeterminate troponins. An echocardiogram done showed an ejection fraction of normal/moderate pulmonary hypertension and trace mitral regurgitation. The claimant's acute respiratory resolved. There was increased activity. She was transferred to the general medical floor. Psychiatry saw the claimant and referred her to substance abuse per psychiatry. Claimant requested to leave the hospital and wanted to go home. She denied any suicidal ideation and denied any recent history of suicidal ideation. She was alert and oriented x3. She was advised of the risks of leaving the hospital and understood and agreed, and left the hospital against medical advice. On [REDACTED], claimant has acute appendicitis and her appendix was removed without complications.

Claimant testified that she lives with her brother and she is separated from her husband. Claimant does have a driver's license and she does drive but doesn't have a vehicle. She borrows one and usually drives 5-6 blocks. Claimant is able to cook and she cooks things like hamburgers and french fries and she grocery shops 2 times per month with no help. She did receive Food Assistance Program benefits. Claimant testified that she watches television 8 hours per day as a hobby and she can walk one block, stand for 20 minutes at a time, and sit for an hour at a time. Claimant testified she can shower and dress herself and tie her shoes, but not touch her toes, bend at the waist, or squat. Claimant testified that the heaviest weight she can carry is 5 pounds and that she is right-handed and she has left shoulder arthritis. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 3/4. Claimant

testified she does smoke a half pack of cigarettes per day and her doctor has told her to quit but she's not in a smoking cessation program. Claimant testified that she used to drink a 6-pack of beer on the weekend but she had stopped drinking approximately one year before the hearing. Claimant testified that in a typical day she watches television, takes her medication, but lately she hasn't had any medication.

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. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. 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 claimant has a severely restrictive physical or mental impairment. There is no mental residual functional capacity assessment in the record. There is no evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person, and place during the hearing.

For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical or mental impairment. 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 work. There is insufficient 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 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. There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. In addition, claimant did testify that she does receive relief from her pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines 202.13 and 203.25, a younger individual (age 46), with a less than 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 9, 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.

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.

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