

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: 2008-30567
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 11, 2008
Otsego 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 December 11, 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 July 9, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On August 7, 2008, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On August 12, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On August 25, 2008, claimant filed a request for a hearing to protest the department's negative action.

(5) On September 19, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendations: the claimant alleged depression and anxiety. She is only treated by her family doctor for that. He reported she was anxious at times with a flat affect but she was pleasant and cooperative. The only mental limitations indicated she had were related to her ADHD. She had some degenerative changes in her back and hip but no significant abnormalities noted. There was no evidence of neurological abnormalities and the claimant can ambulate without assistance. The claimant's treating physician has given sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(b)(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing simple unskilled medium work. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled medium work. In lieu of the work history, the claimant will be returned to other work. Therefore, based on the claimant's profile of a younger individual, more than a high school education and a history of unskilled work, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and

severity of the claimant's impairments would not preclude activity at the above stated level for 90 days.

(6) The hearing was held on December 11, 2008. At the hearing, claimant waived the time period and expected to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on January 16, 2009.

(8) On January 23, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28.

(9) Claimant is a 36-year-old woman whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 188 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant last worked in [REDACTED] for [REDACTED] stocking shelves with bread and wholesale items. Claimant has also worked as a front desk clerk, a certified nurse's assistant and a residential home aide.

(10) Claimant alleges as disabling impairments: depression, anxiety, ADHD, arthritis, hip problems, and fibromyalgia.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an MRI of the lumbar spine dated [REDACTED] shows mild right foraminal stenosis at L5-S1 level which was multifactorial due to a small right paracentral disc bulge and facet hypertrophic changes (Pg 36 and 118).

An MRI of the right hip dated [REDACTED] showed mild arthropatic changes in the hip and slightly enlarged cystic right ovary with a small amount of free fluid (Pg 113). X-rays of the right hip shows minimal degenerative changes (Pg 114).

A DHS-49 form dated [REDACTED] shows that claimant had fibromyalgia, chronic back pain and hip pain due to arthritis, attention deficit hyperactive disorder (ADHD), anxiety and depression. The claimant was 55" tall and 199 pounds. Her blood pressure was 100/54. She had tender trigger points in the back. She is often anxious with a flat affect. She is pleasant and cooperative (Pg 23). The doctor indicated the claimant did not medically require an assistive

device for ambulation. She had diffused back and hip pain which the doctor indicated would limit her ability to safely lift over 25 pounds. He stated she can stand/walk at least two hours and sit about six hours. The only mental limitations indicated were her concentration. The doctor stated the claimant had been recently treated for ADHD (Pg 24). New information indicates that an examination made [REDACTED] indicates that claimant has no fracture or bony obstruction in her neck. She has no congenital anomaly. Claimant had facet arthropatic changes in the cervical spine including the upper levels, particularly B2-B3 and C3-C4 bilaterally. She had mild degenerative spondylitic changes. Minimal disc disease noted throughout. Mild uncovertebral arthros noted throughout (new information Pg T).

Claimant also has an arthrogram of the left hip showing no obvious capsular tear. No osteochondral lesion. No fracture, boney destruction or avascular necrosis noted. No flattening of the femoral head seen. Slight superior joint space narrowing and subchondral sclerosis and mild spurring at the superolateral acetabulum scene. No osteochondral bodies (joint mouse) or extension of contrast into the subchondral bone seen. Medical consultation [REDACTED] indicates that claimant was in general, was weak in the muscles but there was no focal atrophy and most important there were no trigger points present in any other classic tender points, bilaterally and levator scapulae bilaterally. She did have a few tender points along some tendons and more so along joints. Her reflexes were 2+ and symmetric. Spurling's maneuvers were negative. Straight leg raises were negative (new information Pg 5).

At Step 2, claimant's 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 a duration of at least 12 months. There is insufficient objective clinical/medical evidence in the record that claimant suffered 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 report of symptoms and limitations made by claimant. The Administrative Law Judge finds that the clinical impression in the DHS-49 is that claimant is stable and that she can occasionally lift 20 pounds or less but never lift 25 pounds or more and that she can stand or walk at least two hours in an eight-hour day and sit about six hours in an eight-hour day. Claimant is able to use both of her upper extremities for repetitive actions such as simple grasping, reaching, pushing and pulling and fine manipulating and is able to operate foot and leg controls with both feet and legs (Pg 24). The 49 indicates the examinations are normal with the exception of tender area at the hips and pain in the area of the hips and diffused tender trigger points on the back. 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 or symptoms rather than medical findings. Reported symptoms are insufficient basis upon which in finding a claimant evidentiary proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish the claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. 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. Claimant was able to all the questions at the hearing and was responsive to the questions. Claimant was oriented to time person and place. For these reasons, this Administrative Law Judge finds that

claimant has failed to meet the 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 would 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 has worked as a store clerk and as a front desk clerk. Even with her impairments, she should be able to perform her prior work as a desk clerk as that job does not require strenuous physical exertion. There is no medical evidence which this Administrative Law Judge could base a finding that claimant is unable to perform work she has engaged in the past. Therefore, had claimant not already been denied at Step 2, she would be denied again at Step 4.

Claimant testified on the record that she does have depression, anxiety, ADHD and is depressed about life in general.

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).

There is no sufficient 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. Claimant did testify that she does receive some substantial relief from pain medication. Therefore, this Administrative Law Judge finds that the objective medical/psychiatric 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, a younger individual, (age 36), with a high school education and 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 case workers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person age 65 or older. PEM Item 261, Pg 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 the claimant is unable to work for a period to exceed 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

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should be able to perform a wide range of light and sedentary work even with her impairments.

The department has established its case by a preponderance of the evidence.

/s/

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

Date Signed: February 2, 2009

Date Mailed: February 3, 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.

LYL/db

cc:

