

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: 2008-30579
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 5, 2009
Allegan 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 February 5, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

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 June 19, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 4, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On August 8, 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 contest the department's negative action.

(5) On September 23, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the records in the file did not demonstrate any limitations due to depression or coronary artery disease. She does appear to have some foot pain that may be related to peripheral neuropathy. However, there does not appear to be functional limitations. Medical opinion was considered in light of 20 CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose significant limitations. Public Law 104-121 is incorporated herein. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case is also denied. SDA is denied per PEM 261 due to lack of severity.

(6) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 130 pounds. Claimant attended the 10th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 2001 [REDACTED]. Claimant has also worked for temp services and as a restaurant cook and as a certified nursing assistant.

(8) Claimant alleges as disabling impairments: coronary artery disease, depression and peripheral neuropathy.

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 2001. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a treatment note of [REDACTED] reported the claimant complained of foot pain. She reported history of peripheral neuropathy. Her partial exam was normal with the exception of diminished pulses. Sensation was intact. (Page 49)

Emergency room note of [REDACTED] reported the claimant to have abdominal pain. She was reported to be a chronic substance abuser. (Page 32)

Treatment note of [REDACTED] reported the claimant to have significant dental decay that appeared to be like what is found with amphetamine use. (Page 43) Treatment note of [REDACTED] reported the claimant to appear to be doing fine. Compliancy issues were described. (Page 42)

A Medical Examination Report at page 11 indicates that claimant has a wasted and ill looking general appearance but she was normal in all areas of examination. Her blood pressure was 120/88. Her best visual acuity in the right eye was 20/30 and 20/30 in the left eye. Claimant was 168 cm tall and weighed 58 kg. At page 12 of the medical report, the clinical impression was that claimant was deteriorating and that she can occasionally lift less than 10 pounds and stand or walk less than 2 hours in an 8 hour day and that a cane would help her with balance and that she could use both of her upper extremities for simple grasping and reaching but not pushing and pulling and fine manipulating and that she has limitations in comprehension, sustained concentration, following simple instructions, and reading and writing. A report of a minor procedure [REDACTED] indicates that claimant was taken to the endoscopic suite and sedated by the nurse anesthetist. The endoscope was passed without difficulty into the esophagus and there was a meaty foreign body in the distal esophagus. There were no malignant appearing changes or masses present. There were no tears or ulcerations. (Pages 14 and 15) Progress notes of [REDACTED] indicate that claimant's vital signs were temperature 98.2, blood pressure 125/96, pulse 76, and respirations 20. Pulse oxygen 96% on room air. On examination the claimant was alert, active and not acutely distressed. Her heart had regular rate and rhythm without a murmur. Lungs were clear to auscultation throughout. The neck was without carotid bruits. Her abdomen bowel sounds were normal active. Abdomen was soft and non-tender without palpable masses. Extremities, there was no peripheral edema. Neuralgic, her cranial

nerves 2 through 12 were intact. She had 5/5 grip strength of the upper extremities with no deficits present. Full motion of the right arm. There is no spasm or contracture noted. There was 5/5 strength in her lower extremities. She was ambulating without difficulty. (Page 19) Claimant was advised to stop smoking because she was a smoker and claimant was also advised to stop drinking because she was an alcohol abuser. Medical reports from [REDACTED] indicate that all cardiac workup was done and was negative. Claimant had abdominal pain but no fever, chills, chest pain or shortness of breath. She had no nausea, vomiting, diarrhea or constipation. Claimant has rotting teeth with very poor oral hygiene. The doctor indicated that it looked like methamphetamine teeth but was otherwise without distress. Claimant's vital signs were stable. She was afebrile. She was normocephalic and atraumatic. Her neck was supple and her lungs were CTA. She was advised to quit smoking. (Page 43) Radiology report of [REDACTED] indicates that there was no infiltrate, effusion or pneumothorax. The cardiac silhouette and pulmonary vessels appear normal. A LAD coronary artery stent was noted. Claimant was negative for acute cardiac pulmonary process. (Page 37) A radiology report of [REDACTED] indicates that there was mild right and minimal left basilar dependent atelectasis. The liver was relatively diffusely decreased and attenuation relative to the spleen typical of fatty infiltration. The spleen, adrenal glands, pancreatitis and kidneys appear unremarkable. No hydronephrosis is evident bilaterally. The bowel pattern was not obstructed. No free air or free fluid is seen. No adenopathy or acute inflammatory changes were noted. The uterus and adnexa/ovaries appear grossly unremarkable. The summary was a fatty liver. (Page 35)

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 a 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 her legs and feet and her hands as well as 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 cannot give weight to the treating physician's DHS-49 as it is internally inconsistent. The 49 indicates the examinations areas are normal with the exception of a wasted appearance. However, the clinical impression was that she was deteriorating and that she could stand or walk less than 2 hours in an 8 hour day and lift less than 10 pounds. There are no laboratory or x-ray findings listed in the DHS-49. A statement made by claimant's physician that claimant has mental limitations based upon depression are not supported by the objective medical evidence contained in the file. The form indicates that claimant may need a cane to help her with her balance but does indicate that there is anything wrong with her balance. No opinion is rendered as to how long claimant can sit. 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, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon the claimant's report of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant as 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 insufficient objective medical/psychiatric evidence in the record indicating that claimant suffers mental limitations resulting from her reportedly depressed state.

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).

Claimant testified on the record that she does not have any mental impairment. However, the record indicates that she has stated that she has suffered from depression. 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 was able to answer all the questions at the hearings and she was oriented to person, time and place during the hearing. Therefore, claimant's benefits must be denied 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 past relevant work. This Administrative Law Judge finds that the claimant's past relevant work was light work. As a restaurant cook or a [REDACTED] employee, the jobs would not require strenuous physical exertion and there is no objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work to which she was engaged in in prior years. This Administrative Law Judge will find that she may not be able to perform her work as a certified nursing assistant since that would require heavy lifting. However, the objective medical evidence in the file does not even indicate that claimant cannot perform heavy

lifting. There is only a statement by the doctor that claimant cannot do so. Therefore, claimant is disqualified from receiving disability at Step 4.

Page 32 indicates that claimant is a chronic substance abuser. Claimant did admit on the record that she drank two to three mixed drinks every couple of days and smoked a pack of cigarettes per day up to approximately 6 to 9 months before this hearing. Claimant testified that she has never taken any drugs besides medications.

In 1996, congress amended the Social Security Act to preclude the award of SSDI and denied benefits when alcoholism or drug addiction materiality contributes to the claim of disability. The 1996 amendments provide: an individual should not be considered to be disabled for purposes of this title if alcoholism or drug addiction for this subparagraph would be a contributing factor material to the commission's determination that the individual is disabled. Contract with America Advancement Act of 1996, Public Law 104-121, Section 105(b)(1), 110 STAT. 853. 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) (Supplement Five 1999).

Claimant's testimony and information contained in the file indicates that claimant has a history of alcohol and tobacco abuse. Applicable hearing is Drug Abuse and Alcohol Legislation. This Administrative Law Judge finds that even if claimant were to be considered disabled, her drug abuse and alcohol use were material to her alleged disability and alleged impairment.

There is insufficient objective medical 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. In addition, based upon claimant's reports, it is documented that she had heavy use of alcohol which would have contributed to her physical and any alleged mental problems. Claimant testified on the record that her doctor has told her to quit smoking and she continues to do so.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant is not in compliance with her treatment plan and thus is denied disability based upon her noncompliance also.

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. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no 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).

This Administrative Law Judge finds that claimant has submitted insufficient objective medical evidence that shows that she lacks the residual functional capacity to perform light or sedentary work if demanded of her.

Under the Medical-Vocational guidelines, a younger individual (age 41), 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, page 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 16, 2009

Date Mailed: February 18, 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 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

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