

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: 2008-7039

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2008

Wayne 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 March 4, 2008. 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 April 2, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 29, 2007, the Medical Review Team denied claimant's application stating that claimant could perform her prior work and that her impairments were non-exertional.

(3) On September 4, 2007, the department caseworker sent claimant notice that her application was denied.

(4) On October 16, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 1, 2008, the State Hearing Review Team again denied claimant's application stating in this analysis and recommendation: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that that the claimant is capable of performing a wide range of unskilled, light 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, light work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and a history of unskilled work, MA-P is denied using Vocational Rule 202.20 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 work activity at the above stated level for 90 days.

(6) The hearing was held on March 4, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was not submitted and the record was closed on July 28, 2009.

(8) On the date of hearing, claimant was a 47-year-old woman whose birth date is [REDACTED]. Claimant was 6' tall and weighed 141 pounds. Claimant is a high school graduate and had one year of secretarial college along with computer skills.

(9) Claimant last worked in September 2002 as a home healthcare aid. Claimant also worked as a clerk for the [REDACTED] doing transactions for vehicles, as a mortgage company receptionist, as an assembler, and as a telemarketer.

(10) Claimant was receiving Food Assistance Program benefits and the Adult Medical Program.

(11) Claimant alleges as disabling impairments: hypertension, depression, anxiety, scoliosis, bulging discs, arthritis in her knees, fibromyalgia, and back pain.

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 2002. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant was in outpatient treatment at [REDACTED] for major depression with an unremarkable mental status exam. (Page 25) According to a [REDACTED] consultative exam she reported a history of alcohol abuse. Her memory was intact and her mental status exam was unremarkable although her affect was somewhat depressed. She was diagnosed with major depression. (Pages 16-18) According to a [REDACTED] consultative exam she was 5' 11" and weighed 131 pounds. Her blood pressure was normal. Her lungs were clear. She used a cane but her gait was normal (although slow). Her grip strength was normal bilaterally. She did have some limitation of motion of her lumbar spine with no neurological deficits. (Pages 5-11) On physical exam on [REDACTED], claimant was well-developed, well-nourished, cooperative, and in no acute distress. She was awake, alert, and oriented x3. She was dressed appropriately and answered questions fairly well. Her pulse was 78, respiratory rate 16, blood pressure 130/80. Her visual acuity without glasses was 20/50 on the right and 20/40 on the left. She was normocephalic and atraumatic. Her eyelids were normal. There was no exophthalmos, icterus, conjunctiva, erythema, or exudates noted. Extraocular movements were intact. In her ears there was no discharge in the external auditory canals. No bulging erythema or perforation of the visible tympanic membrane noted. In her nose there was no septal deformity, epistaxis, or rhinorrhea. In her mouth her teeth were in fair repair. Her neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. External inspection on the ears and nose revealed no evidence of acute abnormality. Her chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi, or wheezes noted. No retractions noted. No

accessory muscle usage noted. No cyanosis noted. There was no cough. In her cardiovascular there was normal sinus rhythm, S1, and S2. There were no rubs, murmur, or gallop. In the gastrointestinal the abdomen was soft, benign, and non-distended, non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen were not palpable. On the skin there were no significant skin rashes or ulcers. Her extremities were positive for mild tenderness on palpation of the lower lumbar area. No obvious spinal deformity, swelling, or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers, muscle atrophy, joint deformity, or enlargement noted. In her bones and joints the claimant did have a cane but did not need to use it during the exam although without the use of her cane her gait was slow. Her gait was slow with the use of a cane. She was able to do tandem walk, heel walk, and toe walk slowly. She stated she was unable to squat. She was able to bend down to 60% of the distance and recover. Grip strength was equal bilaterally. The examinee was right-handed. Abduction of the shoulders was 0-150 degrees. Flexion of the knees was 0-150 degrees. Straight leg raising test while lying was 0-40 degrees and while sitting was 0-90 degrees. Neurologically, the claimant was alert, awake, and oriented to person, place, and time. Cranial nerves II: Vision as stated in vital signs. III, IV, VI: No ptosis or nystagmus. Sensory functions were intact to dull and sharp gross testing. Motor exam revealed fair muscle tone without flaccidity, spasticity, or paralysis. She was diagnosed with hypertension, chronic back pain, and thyroid disease. On exam she had a mildly enlarged thyroid gland, depression, headaches, hyperlipidemia, osteoporosis, and arthritis. (Pages 7-8)

The mental residual functional capacity assessment in the file indicates that claimant was moderately limited in some areas and did not answer any of the questions except to state that she

was moderately limited in the ability to remember locations and work-like procedures and the ability to understand and remember one or two-step instructions and felt that she was markedly limited in the ability to carry out detailed instructions. (Pages 27-28)

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 are no laboratory or x-ray findings listed in the file. The medical forms indicate that assistive devices are not medically required or needed for ambulation even though claimant uses a cane. There is no opinion rendered regarding how long claimant can stand, sit, or walk. The clinical impression is that claimant is stable; however, the only finding made is that claimant does have some tenderness in her musculature. There is no medical evidence or 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 that claimant has a severely restrictive physical impairment.

There is insufficient objective psychiatric evidence in the record indicating 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).

There is a mental residual functional capacity assessment in the record; however, it does not state that claimant is markedly limited in any areas. 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 and for her physical examination she was alert and oriented x3. 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 as a receptionist or as a telemarketer even with her impairments. A receptionist or telemarketer does not require strenuous physical exertion. There is no 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. In addition, claimant has not established that she has such a severe mental condition that she could not do her prior work. In fact, claimant was oriented to time,

person, and place during the hearing. She was able to answer all the questions at the hearing and was responsive to the questions. Her mental status examinations were unremarkable.

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 no 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. Claimant testified on the record that she can walk one block, stand for 30 minutes at a time, and sit for 30 minutes at a time. Claimant states that she can squat but she can't get up and that she can bend slightly at the waist and tie her shoes if she's sitting as well as shower and dress herself. Claimant testified she can carry her purse or 2-3 pounds and that she is right-handed and that she does have some numbness in her right hand. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 7. Claimant testified that she does smoke a pack of cigarettes per day and that her doctor has told her to quit and she is not in a smoking cessation program. Claimant is not in compliance with her treatment program as she does continue to smoke despite the fact that her doctor has told her to quit.

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).

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. 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. 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 47), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

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: August 4, 2009


Date Mailed: August 5, 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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