

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: 2008-16276
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 11, 2008
Macomb 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 September 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 January 2, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 26, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

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

(4) On March 10, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 22, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant retains the capacity to perform at least unskilled, medium work that is easy and can be learned in a short period of time. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform all basic work activities. The claimant retains the capacity to do unskilled work. Therefore, MA-P is denied per the provisions of 20 CFR 416.920(f). Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on September 11, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) The record was left open and no additional medical information was submitted. The record was closed on November 17, 2009 approximately one year after the hearing.

(8) Claimant is a 48-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 125 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(9) Claimant last worked August 5, 2007 at a [REDACTED] as a manager in an office taking orders. Claimant also worked at a hospital for 8 years and worked at [REDACTED] in customer service and for the [REDACTED] as a noon aid and crossing guard.

(10) Claimant was receiving unemployment compensation benefits in the amount of \$724 bi-weekly and had cobra health insurance.

(11) Claimant alleges as disabling impairments: depression, bipolar disorder, anxiety, arthritis in the knees and ankles, delusions, hearing and seeing things, and paranoia.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a discharge summary from [REDACTED] indicates that claimant presented as a 46-year-old Caucasian female who was overall cooperative. Her affect seemed to be fairly restricted. Mood was quite depressed, irritable, thought racing, and difficulty focusing. Speech was coherent. No thought disorder. Thought process seemed to be slightly disorganized and moderately irrational. There was no paranoia. No delusional thinking. No hallucinations noted. Affectivity was labile. She was oriented in three spheres. Her intellectual capacity was average range and attention span was short. Concentration was poor. Memory was intact for recent, immediate, and remote. She was able to remember 3 objects after 3 minutes. Insight was fair. Judgment was fair-to-marginal. She was diagnosed as having bipolar disorder, mild-to-moderate attention deficit disorder, and alcohol dependence and her GAF score was 25 and the highest GAF was 50. (pp. 3-4)

A [REDACTED] psychological mental status report indicates that claimant was alert and well oriented during the interview. She was polite and cooperative. She was spontaneous, well organized, and detailed in her presentations. Claimant attempted suicide in [REDACTED] when she was let go from her job she took 60 Ambien. She sat and counted them and was drinking. She then called her friend who came to her house and called 911. She was able to state her full name and stated that it was Thursday, the [REDACTED] even though it was the [REDACTED]^t. She could not recall the month and gave the year as 2007. She knew that she was in an office on [REDACTED]. She could remember 5 digits forward and 3 digits backward. She was able to register all 3

objects of pen, plant, and chair and recalled them as plant, chair and dish after 3 minutes. When asked to name presidents during her lifetime, she responded: Clinton, Bush, and Reagan.

Claimant was able to state her date of birth as [REDACTED] and on her last birthday she didn't remember what she did. She stated five cities as Las Vegas, Los Angeles, New York, Houston, and Chicago. Current famous people were Hilary Clinton and Obama and the current events were the presidential debates. In calculations $4+5=9$, $8+6=14$, $12-5=9$, 3×9 =she didn't know, 6×7 =she didn't know. In serial 7's she stated 100, 92, 85, and 76. When asked to interpret "the grass is always greener on the other side of the fence", she stated "that sometimes things may be better on somebody else's side of the fence and they're just as good on the side were you're at." When asked to interpret "no sense crying over spilled milk", she stated, "try, try again, and it will get better." She stated that a tree and a bush were similar because they were both plants and she stated they were difference because they grow differently. One is short and one is tall. When asked what she would do if she an envelope on the street that was sealed and addressed and had a stamp on it, she said that she would mail it. When asked what she would do if she was the first person in the movies to see smoke and a fire, she stated run out and yell smoke and fire. When asked about future plans she stated she wanted to be focused on her home so that she could take a part-time course in school and get a part-time job for right now so that something in her life makes sense. Her prognosis was guarded and she current GAF was 35. The report stated that she was poorly oriented during the interview and she displayed short attention span and poor concentration and her memory was in the low-average range, and she was poor at computation. Her abstract verbal reasoning was adequate. Her judgment was impaired. (pp. 6-7) A mental residual functional capacity assessment in the record indicates that claimant was markedly in most areas and moderately limited in other areas. (pp. 2-3)

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 impairment. Claimant did not allege any physical impairment beyond arthritis in her knees and ankles and she stated that she had no limits in her ability to walk, stand, or sit. She could squat even though it was hard on her hips and knees. She could bend at the waist as well as shower and dress herself, touch her toes, and tie her shoes. Claimant could carry 35 pounds or 10 pounds on a repetitive basis and she was right-handed and her hands and arms are fine. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is an 8. Claimant testified that she smokes a pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant also testified that she drinks a glass of wine a week and her doctor has told her to quit drinking and that she stopped smoking marijuana approximately a year before the hearing. Claimant testified that in a typical day she sleeps, watches television, feeds her cat, eats, gets the mail, and drinks water. Claimant testified that she is not currently suicidal. It should be noted that claimant was receiving unemployment compensation benefits.

A person is only eligible to received unemployment compensation benefits if they are monetarily eligible, totally or partially unemployed, and have an approvable job separation, and must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis.

Claimant did testify that she does have a bipolar disorder, depression, and anxiety.

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 insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. The mental residual functional capacity assessment in the record indicates that claimant is markedly limited in all areas; however, she is holding herself out to be mentally and physically able to work and as being available for and seeking work. Generally, an individual might be available for and seeking full-time work. Under certain conditions a person who has a disability may be able to limit his or her availability for work to part-time only. A claimant can qualify for unemployment compensation by:

1. Providing documentation from a licensed physician which establishes that:
 - a. He or she has a physical impairment that is chronic or expected to be long-term or permanent, and
 - b. The impairment leaves him or her unable to work full-time and demonstrating that the impairment does effectively him or her from the labor force.

In this case, claimant's claims are inconsistent. If she is holding herself out as having a disability or impairment, it cannot effectively remove from her labor force or she is not entitled to receive unemployment compensation benefits. Claimant was oriented to time, place, and person during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant testified on the record she was not currently suicidal.

Therefore, there was 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. In addition, it is documented that claimant did continue to use alcohol and smoke cigarettes despite the fact that her doctor has told her to stop. Therefore, 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).

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 sedentary and light work. As a manger at [REDACTED] does not require strenuous physical exertion and claimant was able to work in customer service as a public school noon aid and crossing guard, there is insufficient objective medical/psychiatric 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/psychiatric 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.

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.

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 12, 2010
Date Mailed: February 16, 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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