

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: 2008-17343

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 26, 2008

Genesee 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 August 26, 2008. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for 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 October 17, 2007, claimant filed an application for State Disability Assistance benefits alleging disability.

(2) On November 20, 2007 the medical review team denied claimant's application for Medical Assistance but granted claimant's State Disability Assistance benefits with a medical review of February 2008.

(3) On February 2008, the State Disability Assistance benefits were reviewed.

(4) On February 14, 2008, the medical review team denied claimant's application again for Medical Assistance benefits and also denied claimant's continued State Disability Assistance benefits.

(5) On February 26, 2008, the department caseworker sent claimant notice that her State Disability Assistance benefits would be cancelled.

(6) On May 30, 2008, the state Hearing Review Team again denied claimant's applications stating that it needed additional medical information in the form of a psychiatric evaluation.

(7) The hearing was on August 26, 2008. At the hearing the claimant waived the time periods and requested to submit additional information.

(8) Additional Medical information was finally submitted and sent to the State Hearing Review Team on May 3, 2010.

(9) On May 4, 2010, the State Hearing Review Team again requested a complete physical examination by a license physician.

(10) On November 18, 2009, the Administrative Law Judge contacted the caseworker and the caseworker determined that the Medical Review Team approved claimant for State Disability Assistance and Medical Assistance adcare on October 30, 2008, for an August 11, 2008 application. This is reflected in her current BRIDGES case status. The programs remain

open and the new information was sent to the Administrative Law Judge and forwarded to the State Hearing Review Team.

(11) This Administrative Law Judge needs to make a decision only for State Disability Assistance benefits for the February to August 2008.

(12) On the date of the hearing, claimant was a 53-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 135 pounds. She graduated from the 12th grade, but stated that she could not read and that she could add and subtract.

(13) Claimant last worked serving and Banquets. Claimant also worked at a deli and for the [REDACTED] serving at banquets for 19 years.

(14) Claimant alleges as disabling impairments: hearing loss, dizziness, bi-polar disorder, depression, TMJ syndrome, arthritis.

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).

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261.

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since approximately 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a DHS-49 form dated October 2007 showed the claimant had a perforated right tympanic membrane and hearing loss. She had ataxia with an unsteady gait and bi-polar depression. (p 43) A DHS-49 E form in the file dated November 2007 showed the claimant was moderately to markedly limited in almost all areas of functioning. (pp 52-53) A DHS-49 form dated January 2008 showed the claimant's exam was within normal limits except for dizziness. She was noted to have bi-polar and depression but her mental status was within normal limits. (p8) A psycho-social assessment dated October 25, 2007, showed the claimant has a history of alcohol and marijuana abuse. (p21) A psychiatric evaluation dated November 28, 2007, showed the claimant reported she gets dizzy a lot from being beat up by her husband. She was somewhat distractible and talked a lot about how sick she was and how nobody wants to her. She was very labile and her moods go up and

down. (p 29) An internal medical examination on September 3, 2008, indicates that claimant was 5'6" tall and weighed 157 pounds and her blood pressure was 120/60. The medical report was dated September 3, 2008, indicated that claimant could occasionally lift or carry 10 pounds but never carry 20 pounds or more. Her clinical impression was that she was stable. She could use both of her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating, and could operate both foot and leg controls with both feet and legs. She was limited in her memory and in social interaction had anxiety and bi-polar disorder. A November 8, 2008, mental functional capacity assessment in the record indicates that claimant was moderately to markedly limited in almost all areas of interaction. A 2nd mental residual functional capacity assessment in the record dated January 28, 2008, indicates that claimant was markedly limited in all areas of interaction. A medical examination report dated January 24, 2008, indicates that claimant was 5'6" tall and weighed 145 pounds and her blood pressure was 122/80, she was normal in all areas of examination except she had some dizziness and ataxia and a bi-polar disorder. Her condition was stable and she was able to carry 10 pounds or less occasionally. She could use both upper extremities for simple grasping, reaching, pushing, and pulling and fine manipulating and could operate both foot and leg controls with both feet and legs. Claimant had chronic ataxia and dizziness and some hearing loss and perforated tympanic membrane. She had some limitations in her social interaction and suffered from depression and bi-polar disorder. A Medical Review Team denied claimant on February 13, 2008 for State Disability Assistance.

A September 3, 2008, medical examination report indicates that claimant was normal and had the same limitations. On October 16, 2008, a mental status examination indicates that claimant was diagnosed with bi-polar disorder, with a history of chronic alcoholism and drug

dependency, arthritis, ear and jaw pain secondary to assault, balance problems, and vision problems and she receives some assistance in managing any benefits assigned due to her alcoholism and drug addiction. She was recommended to continue outpatient psychiatric treatment designed to reduce psychiatric symptoms and stabilize daily functions and address substance abuse. Ongoing use of psychotropic medication was an essential part of the treatment. Her orientation responses was around the October 6, 2008, Thursday at around 4:00 p.m., she gave her full name and she repeated 7 numbers forward and 4 numbers backward and recalled 2-3 objects 3 minutes later. The past presidents were Bush and Carter with Clinton as another recent president. Her date of birth was given as 5-25-55. Five largest cities were New York, Miami, Detroit, I got a headache I don't know. Current famous people were Bush, and I don't know. In her calculation task, $100-7=93$, counting on her fingers, and then slowly 87. $2+3=5$, $7+9=16$, slow on the fingers, $3*8=24$, slowly, and $7*9=no\ idea$. In abstract thinking, the grass is greener on the other side of the fence was interpreted to mean, you always think something is better than what you got. Don't cry over spilled was interpreted to mean, they don't think what you're crying about is something to cry about. A bush and a tree are alike because they got leaves and the difference is that the tree is taller. On judgment questions, claimant would mail it, if she found a stamped addressed envelope on the ground. She would yell fire or leave if she discovered a fire in a theatre. The Medical Review Team approved claimant on October 30, 2008, for the months of May 2008 through October 2011, for Medical Assistance, retroactive Medical Assistance, State Disability Assistance benefits, which would cover the period in question.

The department is required to initiate a determination of claimant's financial eligibility for the requested benefits if not previously done.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under State Disability Assistance Program as of the February 2008 review date.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the February 2008 State Disability Assistance review application if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing and if she is otherwise eligible shall pay to claimant any State Disability Assistance benefits to which she is entitled. This Administrative Law Judge determined that she did not need additional medical information, especially in light of the fact that this case was approximately 2 years old. This Administrative Law Judge proceeded to a decision because the determination was in claimant's favor.

/s/

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

Date Signed: May 14, 2010

Date Mailed: May 14, 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.

2008-17343/LYL

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/alc

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