

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: 2009-29421
2008-21508

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:
September 29, 2009
August 13, 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 September 29, 2009 by Administrative Law Judge Landis Y. Lain. This hearing will be consolidated with a hearing held by Administrative Law Judge Carmen G. Fahie on August 13, 2008.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's applications 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 March 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 17, 2008, the Medical Review Team denied claimant's application stating that claimant could perform her prior work pursuant to 20 CFR 416.920(E).

(3) On April 18, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On May 15, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 12, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing her past work as a cashier which was light work. (p. 19)

(6) The hearing was held on August 13, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) On February 25, 2009, claimant filed a second application for Medical Assistance and State Disability Assistance benefits.

(8) On May 19, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work and that her impairments were non-exertional.

(9) On May 25, 2009, the department caseworker sent claimant notice that her application was denied.

(10) On June 9, 2009, claimant filed a request to contest the department's negative action.

(11) On July 28, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13 and commented that 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 closely approaching advanced age with a high school education, MA-P is denied using Vocational Rule 202.13 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.

(12) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 187 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(13) Claimant was last employed in 2007 at [REDACTED] as a cashier for seasonal work. Claimant has also worked at the [REDACTED] deli as a dietary aid cutting meat and making sandwiches, as a cashier at [REDACTED], and as a home healthcare aid.

(14) Claimant alleges as disabling impairments: hypertension, arthritis, asthma, fractures in her hips, broken ankles in [REDACTED], depression, and a bipolar disorder.

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 Medical Examination Report dated [REDACTED] indicates that claimant was generally normal in all areas of examination except she had swollen bilateral ankles. She was 184 pounds and her blood pressure was 120/68. She could occasionally lift 20 pounds or less and could stand or walk less than two hours in an eight-hour day. She could use both of her upper extremities for repetitive actions such as simple grasping, reaching, pushing/pulling, and fine manipulating and she could operate foot and leg controls with both feet and legs and she had no mental limitations. (pp. 7-8 of the medical reports in Register # 2008-21508)

On [REDACTED], a [REDACTED] medical form indicates that on physical examination claimant was 5' 5" tall and weighed 190.5 pounds. Her pulse was 88, respirations were 16, and her blood pressure was 140/110, 140/96, and 130/92. Her HEENT was normocephalic. No alopecia or lesions on the scalp. Ears: Hearing was normal. Eyes: Vision without glasses was 20/20 bilaterally. Oral Cavity: No difficulty with speech or swallowing. No gingivitis. Neck: There was no adenopathy. No thyroid enlargement. No abnormal bruits. Heart: Regular sinus rhythm. No arrhythmia. No murmur or gallop. Lungs: Lungs were clear. No rales or wheezing. Abdomen: No tenderness or hernia. No organomegaly. Extremities/
Musculoskeletal: No edema or phlebitis of the extremities. Reflexes were intact. Pulses were present. Gait was normal. No limitations in function of all four extremities. Grip strength was normal. Straight leg raising was negative. The impression was uncontrolled hypertension, asthma that was mild to moderate, psoriasis of the legs and feet which was pretty much controlled, and recurrent chronic lower back pain. The physical examination was unremarkable except for the hypertension and she should be able to go back to work according to [REDACTED]. (pp. 5-7 of the medical reports in Register # 2009-29421) Claimant was normal in all of her range of motion testing and she was able to stand, bend, stoop, carry, push, pull, button clothing, tie shoes, dress and undress, dial a telephone, open a door, make a fist, pick up a coin, pick up a pencil, write, squat and arise from squatting, get on and off the examination table, climb stairs, do finger-to-finger and finger-to-nose testing and heel-to-shin testing. Her reflexes were normal except in the ulnar and Hoffman's. She did not need a walking aid and her grip strength was 5/5. (pp. 10-11)

There is also a [REDACTED] psychiatric report in the file which indicated that the claimant occasionally attends church. She does light household chores and she is able to cook a proper meal. The claimant's roommate and children help with the household chores and cooking.

Claimant spends the day at home watching television, reading, talking to her children, and doing light housework. In her free time she watches television. She is a 52-year-old black female standing 5' 5.25" tall, weighing 190.5 pounds, appearing her stated age with good hygiene and grooming. She was somewhat irritable. Posture and gait were normal. She came alone to the clinic by bus. Claimant was in touch with reality and was not responding to internal stimuli. Her self esteem was low. Her psychomotor activity was normal. She had no motivation and had limited insight into her illness. She did not exaggerate or minimize symptoms. Her thought processes were well-organized and easily to follow. Her speech was spontaneous, logical, well- organized and goal-directed. She denied visual and auditory hallucinations, command hallucinations, delusions of control, persecutory delusions, ideas of reference, thought insertion or broadcasting, obsessions; suicidal or homicidal ideation or plan. She felt worthless and admits to sleep disturbance but denies weight loss. Her mood was tense and her affect was full ranged and appropriate. She was alert and oriented to person, place, and time. Her memory was immediate. She was able to repeat six numbers forward and four backward. Her recent memory she recalled three of three objects forward after three minutes. For past presidents she stated Lincoln. The claimant stated that her date of birth was [REDACTED]. Large cities were Florida, Detroit, Yakerwana. Current past famous people were Martin Luther King. Calculations of Serial Seven's were $100-7=94$, $5 \times 6=30$, and $7+5=12$. The claimant was able to state that a quarter, a dime, and a nickel equal forty cents. In response to don't cry over spilled milk, the claimant said, don't cry about the past. In similarities and differences when asked how an apple and an orange were similar, the claimant said, both are fruit. The difference claimant said was that the color was different. In judgment if claimant found a stamped, addressed envelope, she would mail it. If the claimant were the first to discover a fire in a theater, she would leave. In regard to the

claimant's future plans, she stated that her plans were to go to school for something and learn computers. Her symptoms of depression were improving with treatment and she was sober from alcohol and she should not have problems doing simple jobs. Her diagnosis was alcohol abuse in remission, dysthymic disorder, psoriasis, hypertension, asthma, back pain, and childhood issues. Her Axis GAF was 48 and per prognosis was guarded. She was able to manage her benefit funds. (pp. 13-15)

A [REDACTED] Medical Examination Report indicates that claimant was 5' 5" tall and weighed 198 pounds. Her blood pressure was 122/74. The clinical impression was that she was deteriorating and she could carry 10 pounds or less, and could stand or walk less than two hours in an eight-hour day. She could do simple grasping, reaching, and fine manipulating with her upper extremities, but not pushing/pulling. She could not operate foot or leg controls. (pp. 19-20)

A Mental Residual Functional Capacity Assessment in the file indicates that claimant was only moderately limited in the areas of the ability to understand and remember detailed instructions, the ability to carry out detailed instructions, and the ability to maintain attention and concentration for extended periods. However, she was not significantly limited in any other areas. (pp. 37-38)

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 insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The

claimant's most recent medical report indicates that claimant really doesn't have any physical limitation at all and does have some uncontrolled hypertension but her physical examination was basically unremarkable. The DHS-49 indicates the examination areas were also normal. There is only one DHS-49 Medical Examination Report in the file which indicates that claimant's condition is deteriorating; however, the only finding made is that claimant experiences some problems with her ankles. 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 (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. The Mental Residual Functional Capacity Assessment in the record indicates that claimant has basically normal functional capacity and is only moderately limited in a few areas. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment.

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 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 was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. In addition, based upon some of the medical reports, it is documented that claimant did have some prior use of alcohol which would have contributed to her physical and any alleged mental problems.

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 prior work as a cashier or as a deli dietary aid even with her impairments. There is insufficient objective medical evidence in the record which indicates that claimant would not be able to perform her past relevant work. 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 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

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. In addition, claimant did testify that her pain level on a scale from 1 to 10 without medication is an 8, but with medication her pain level is a 6 which indicates that claimant is receiving some relief from her pain medication. 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.

In addition, claimant testified that she does smoke 3-4 cigarettes per day and that her doctor has told her to quit smoking and she is not in a smoking cessation program. 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).

Under the Medical-Vocational guidelines, a person who is closely approaching advanced age with a high school education who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

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: November 13, 2009

Date Mailed: November 13, 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

cc:

