

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2008-22064
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 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 September 4, 2008. Claimant personally appeared and testified. The record for this hearing was closed July 27, 2010.

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 11, 2008, claimant filed an application for Medical Assistance, State Disability Assistance benefits alleging disability.
- (2) On February 15, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On February 22, 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 July 8, 2008, the State Hearing Review Team again denied claimant's application stating: they needed additional medical information in the form of a complete physical examination by a licensed physician.
- (6) The hearing was held on September 4, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was not submitted until February 26, 2010 and then sent to the State Hearing Review Team.
- (8) On March 4, 2010, the State Hearing Review Team again denied claimant's application stating that claimant had insufficient evidence and requested a complete physical examination by a licensed physician.
- (9) An Interim Order was sent to the [REDACTED] Department of Human Services on May 31, 2010.
- (10) No new information was sent in by July 27, 2010, and this Administrative Law Judge closed the record and proceeded to the decision.
- (11) On the date of hearing claimant was a 56-year-old woman whose birth date is [REDACTED]. Claimant is 4'9" tall and weighs 180 pounds. Claimant attended the 6th grade and went to school in Mexico and did not speak English after 20 years in America. Claimant did not have a GED. Claimant is able to read and write and does have basic math skills.
- (12) Claimant last worked 1999 for [REDACTED] working the sewing machine.
- (13) Claimant alleges as disabling impairments: carpal tunnel syndrome, arthritis in the back, dizziness, aching bones, weak arms and a mental impairment of forgetfulness.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 1999. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that she lives with her husband and she has no children under the 18. She did not have a driver's license and did not drive and the family took her where she needed to go. She cooked 2-3 times per day and cooked things like eggs, meat, chicken, and she grocery shopped 1-2 times per month and needed help with carrying groceries and transportation. Claimant testified that she takes out the garbage, makes the bed and does dishes. Claimant testified that she can walk one block, stand for a half an hour, sit for 2 hours at a time, shower and dress herself, tie her shoes, but not squat because of the pain in her knees. She could bend a little at the waist but she could not touch her toes. Claimant testified that she could carry a gallon of milk in both hands and she is right handed and had carpal tunnel syndrome in her hands and arms. Her level of pain without medication was a 10 on a scale from 1-10 and with medication is a 3. Claimant testified that in a typical day she gets up and takes a shower, gets her husband up for

breakfast and gives him a sponge bath, makes lunch watches TV, eats dinner, pulls the wheelchair next to the bed and helps him move from the bed to the chair. Claimant also testified that she is a resident alien.

A physical examination dated December 1, 2009, indicates that on examination the claimant is alert and cooperative. The claimant weighs 181 pounds, blood pressure 134/78, height is 4'11", vision with glasses is 20/25 on left and 20/30 on the right and 20/25 bilaterally. Clinically, the claimant is not jaundiced. The claimant's gait is normal. The claimant was able to get on and off the examination table. The claimant could raise both arms above the head level. HEENT: was normocephalic. External eye movements intact. Pupils were equal and regular reacting to light in accommodation. The fundus was intact. ENT was benign. Neck was supple. No thyromegaly. No venous engorgement. Trachea is central. No carotid bruit. The chest moves normally on either side. Respiratory movements are normal. The chest is clear to auscultation and percussion. No rhonchi or rales noted. The cardiovascular: the heart size is normal. No audible murmur. JVD is not raised. Air entry is somewhat decreased. No adventitious sounds. Trachea is midline. The claimant does not appear to have sinus problems. The abdomen was soft. No masses felt. Bowel sounds are normal. No evidence of hernia. Spleen is not palpable. No ascites. Bones and Joints: straight leg raising is equal bilaterally. All peripheral pulses are equal and good bilaterally. There is no wasting of muscles. Hand grip is equal. She can open and close her fingers. Movements are not significantly restricted. There are about 80-90% within normal range. Lower back movements are restricted to about 75% of normal range. She does not use a cane or other assistive devices. She does not have much trouble getting on and off the table, but she complains of stiffness. Cranial nerves 2-12 were grossly intact. No gouty deformities or nodules noted. Sensory test: pin prick and sensation are normal. Plantar is flexor bilaterally. Cerebellar function is normal. Motor strength is equal bilaterally. Plantar reflex is flexor. The deep tendon reflexes are 2+ in the upper and lower extremities. Heel to knee and finger to finger, finger to nose testing is normal. The gait is normal. No wasting of muscles. Speech and memory appear to be normal. Orientation is normal. The claimant's general health is good. No leg ulcers. The conclusion is that this 57-year-old female suffers with obesity, musculoskeletal pain affecting the hands, elbows and arms, recurrent lumbar pain, history of gout and cold and sinusitis. She did have mild arthritis affecting both knees. (pp. A1-A3)

A medical examination report dated February 8, 2008, indicates that claimant was normal in all areas of examination. She was 5' tall and weighed 179 pounds and her blood pressure was 130/80 and she was right hand dominant. Her chief complaint was carpal tunnel syndrome. The clinical impression is that she was deteriorating and that she could occasionally carry less than 10 pounds and she did not need assistive devices for ambulation and she could not use her upper extremities for simple grasping, reaching, pushing and pulling or fine manipulating and could not operate foot and leg controls. She had no mental limitations (pp. 3-4).

A June 11, 2008, radiograph of the lumbosacral spine vertebral body heights were normal throughout. There was no evidence of acute fracture or static subluxation. No

significant degenerative disc disease was identified. There is a very mild degree of facet arthropathy at the L4- L5 and L5-S1 levels. The visualization of the bony pelvis is normal. The overlying bowel gas pattern is normal (p. A4). On April 27, 2009, claimant had an unremarkable pelvic ultrasound (p. A5). On April 27, 2009, claimant had a bilateral breast mammography which indicated negative no evidence of malignancy normal interval follow-up is recommended in 12 months (p. A6).

On December 30, 2008, claimant had a CT of the abdomen and pelvis without contrast, which indicated that the spleen is mildly prominent in anteroposterior dimension measuring 14.1 cm. The pancreas and adrenal glands appear normal. The right and left kidneys are also normal without evidence of calculus. There is no surrounding fat stranding or other perirenal inflammatory changes. There is no hydronephrosis, no calculi are identified. The appendix appears unremarkable. There is no fat stranding or other inflammatory changes in the lower right quadrant. There is no stranding in the left lower right quadrant. No bowel abnormalities are identified. No enlarged lymph nodes or free fluid are identified in the abdomen. Uterus and ovaries are present (p. A7).

A bone density exam was taken June 11, 2008, for osteoporosis which indicated within normal limits in the overall WHO bone mineral density classification is low bone mass (p. A8).

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 clinical impression is that claimant is deteriorating. 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.

Claimant alleges the following disabling mental impairments: forgetfulness.

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 severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient 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 oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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 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. 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.

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 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 or 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.

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. 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. BEM, 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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

