

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: 2008-26200
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 17, 2008
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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, an in-person hearing was held on September 17, 2008. Claimant was represented by [REDACTED]

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) March 24, 2008, claimant applied for MA. Claimant submitted medical records for department consideration.

(2) May 5, 2008, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) May 20, 2008, the department sent claimant written notice that the application was denied. Department C.

(4) July 15, 2008, the department received claimant's timely request for hearing.

(5) August 5, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) September 17, 2008, the in-person hearing was held. Prior to the close of the record, the claimant requested the record be left open for additional medical evidence. Claimant waived her right to a timely hearing decision. March 23, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3/23/09.

(7) Claimant asserts disability based on impairments caused by stroke, migraines, depression, and anxiety.

(8) Claimant testified at hearing. Claimant is 28 years old, 5'3" tall, and weighs 221 pounds. Claimant completed a 4 year college degree. She is currently attending cosmetology school, but testified to having difficulty meeting the program requirements.

(9) Claimant's past relevant employment has been in retail sales, health promotion, secretarial work, and other similar jobs.

(10) February 26, 2008, claimant underwent an MRI of the brain that revealed no acute parenchymal abnormality and mild nonspecific asymmetry in the size of the lateral ventricles with the right appearing slightly larger than the left. Claimant A, pages 19-18.

February 26, 2008, claimant underwent MRA of the neck that revealed no significant or flow-limiting stenosis in the visualized arteries of the neck. Claimant A, page 20. February 26, 2008,

claimant underwent an MR angiogram of the intracranial circulation that revealed tiny vascular prominences in the cavernous segment of the left internal carotid artery and near the left carotid terminalis (approximately 1 mm in size). Claimant A, pages 21-22.

(11) March 17, 2008, claimant was examined by her physician. Treatment notes state that claimant had a right vertebral dissection and stroke. Doctor notes that claimant looks well and it appears that strength in her legs is back to normal. Claimant reports some occasional hot and cold strange sensations on the left side of her body and sometimes the right lower facial numbness. Speech is stable, neurologically. Grip strength is normal, coordination is intact. There is no tremor and no facial drop. Smile is symmetric. Claimant A, page 28. On April 14, 2008, doctor notes that claimant is neurologically intact, with intact coordination and normal grip strength. Claimant A, page 29. May 2, 2008, doctor notes indicate claimant complaints of migraine cephalgia on the left side of her head. Claimant has hypersensitivity and hyperesthesia in the left arm and left leg that is chronic, but no change in function. She has normal grip strength, normal gait, and normal speech. Claimant A, page 33. June 16, 2008, claimant complained of dizziness and nausea. She had slightly wobbly tandem gait and Romberg. Claimant A, page 34. Treatment records indicate claimant has chronic depression and anxiety and frequent migraine headaches. Claimant A.

(12) May 2, 2008, physical therapy notes indicate that claimant came into therapy on February 6, 2008 following CVA of 1/21/08. All treatment goals were achieved and claimant is discharged effective April 17, 2008. Bilateral strength of upper and lower extremities has increased grossly to 5/5. Berg score is 55/56 points. Claimant is independent in home exercises. Single leg balance is 32 seconds on right and 19 seconds on left. Claimant reports that she has some temperature deficits in her left upper and lower extremity, she fatigues more quickly on the

left, and she runs into things on left side when not paying attention. Claimant A, [REDACTED]

[REDACTED]

(13) June 3, 2008, claimant underwent a neurology exam. A letter was written regarding the findings of the exam that indicates, in pertinent part, speech is spontaneous and fluent without paraphasic errors, pupils were equal and reactive, no partial visual loss, face was symmetric with normal sensation and strength, hearing was normal to finger rub, intact swallowing although claimant complained of occasional difficulty in swallowing, normal strength of the sternocleidomastoid and trapezii muscle, tongue was midline with strong, bilateral movements. There was no evidence of resting, intention, or postural tremors. Tone was normal in all 4 extremities. Muscle strength was normal and symmetric. Deep tendon reflexes are intact. Babinski was negative bilaterally. Sensory was remarkable for mild to moderate loss of sensation in left upper and lower extremity including cold, light touch, and pain stimuli. No evidence of sensory ataxia of the left upper and lower extremity. Subjective loss of sensation when tested for light touch, pinprick, cold sensation, and vibration. Claimant has normal gait with a little difficulty performing tandem gait. Romberg was slightly impaired with eyes open and closed. Doctor's assessment is that neurologic deficits are subjective. He plans medication regime. Department A, [REDACTED].

CONCLUSIONS OF LAW

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant had CVA in January 2008. She completed physical therapy on April 17, 2008 and met all treatment goals. She reports loss of sensation in her left upper and lower extremity, but shows no neurologic deficits. She has depression, anxiety, and frequent migraine headaches. Finding of Fact 10-13.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been in retail sales, health promotion, secretarial work, and other similar jobs. Claimant attends cosmetology school, but testifies to difficulty meeting the program requirements. The objective medical evidence does not

demonstrate severe physical or mental impairments of required duration. See discussion at Step 2, above. Finding of Fact 9-13.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

Although claimant is disqualified at Step 4, the Administrative Law Judge will proceed through the Step 5 sequential evaluation process, *arguendo*, to determine whether claimant has the residual functional capacity to perform some other less strenuous work than required by claimant's past relevant employment.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the objective medical evidence of record indicates that claimant is post CVA and has no neurology deficits. She reports subjective loss of sensation in her left upper and lower extremity. She has migraine headaches, depression, and anxiety. The record contains no objective medical evidence to establish that claimant has severe impairments due to migraine headache, depression or anxiety. Department A, Claimant A, Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light activities. Considering claimant's Vocational Profile (younger individual, higher education, and history of unskilled work) and relying on Vocational Rule 202.201, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is **HEREBY UPHELD**.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 7, 2009 _____

Date Mailed: April 10, 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 receipt 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.

JAB/db

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