

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: 2008-27856
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 7, 2009
St. Clair 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 January 7, 2009. 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) benefits?

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 May 29, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 30, 2008, the Medical Review Team denied claimant's application stating that claimant had substance abuse issues.

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

(4) On July 16, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 19, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant reported a history of angioplasty and stent placement in [REDACTED] performed at [REDACTED]. In addition the treatment note of [REDACTED] indicated that claimant had a stress test and echocardiogram performed at [REDACTED] office. Although she alleges she was losing her eyesight the treatment records do not report any vision loss. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. Additional medical information is suggested to assess the severity of the claimant's impairments and the SHRT requested additional treatment records in the form of a stress test, echocardiogram and discharge summaries for the cardiac catheterizations and operative reports from [REDACTED] hospitalizations. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the information in file is inadequate to ascertain whether the claimant is or would be disabled for 90 days.

(6) The hearing was held on January 7, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on February 12, 2009 and on February 18, 2009. Additional medical information was also sent to the State Hearing Review Team on May 12, 2009 at SHRT's request.

(8) On May 22, 2009, the State Hearing Review Team again denied claimant's application stating that the claimant reported a history of angioplasty and stent placement in the past. In [REDACTED] she had coronary bypass grafting. In [REDACTED] she reported constant chest wall pain. She had 1+ pitting edema and decreased pulses bilaterally, but dexterity and grip were intact. Gait was normal. The claimant did have some element of deconditioning. A mental status examination showed the claimant was depressed but there was no evidence of a significant thought disorder. 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 simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age at 50, high school education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 50-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4-1/2" tall and weighs 175 pounds. Claimant attended 1-1/2 years of college and is able to read and write and does have basic math skills.

(10) Claimant last worked two years ago at [REDACTED] as a cashier and service desk clerk. Claimant testified that she has also worked as a phone answerer/clerical work and she also took care of her parents and grandparents for several years.

(11) Claimant alleges as disabling impairments: coronary artery disease, angina, fibromyalgia, hypertension, loss of eyesight, retinitis pigmentosa, herniated disc and depression.

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

The objective medical evidence on the record indicates that treatment notes indicate that the claimant has a diagnosis of hypertension, back pain, history of coronary artery disease, angina and fibromyalgia. Findings reported in the treatment notes were within normal limits or reported mild findings such as mildly elevated blood pressure, trace pretibial edema and complaint of chest pain while performing mopping. There was no indication of vision loss noted although it was noted she had mild exophthalmos. Note of [REDACTED] noted that the claimant had complete detox for a narcotic addiction. (Pages 7-12)

The claimant underwent coronary artery bypass grafting on [REDACTED]. (Page 211) On [REDACTED], the claimant reported having constant chest wall pain. Her vision was 20/40 on the right and 20/50 on the left with corrective lenses. She had 1+ pitting edema. The femoral, popliteal, dorsal pedis and posterior tibial pulses were decreased bilaterally. Hair growth was absent on the lower extremities. The feet were warm and normal color. The grip strength was intact. Dexterity was unimpaired. Range of motion of joints was full. Motor strength and tone were normal. Sensory was intact. Reflexes were intact and symmetrical. Gait was normal. She did have some element of deconditioning.

A mental status dated [REDACTED] showed the claimant's grooming and hygiene were good. She was spontaneous, well-organized and detailed in her presentation. She denied any psychotic symptoms. Her emotional reaction was labile and tearful. The claimant reported receiving substance abuse treatment after she became addicted to opioids prescribed for her chronic pain. Diagnosis was major depressive disorder, recurrent severe.

Physical examination of [REDACTED] indicates that claimant was cooperative in answering questions and following commands. She appeared in mild discomfort. She did appear dysthymic. She was dressed in a sweatshirt, jeans and tennis shoes. The claimant's immediate,

recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the examination. Blood pressure in the left arm equals 110/80. Pulse was 88 and regular. Respiratory rate was 16. Weight was 166 pounds. Height was 63" without shoes. There was a 12 inch sternotomy scar, a 4 inch incision over the right lateral thigh, and a 4 inch incision over the left lower extremity on the skin. Visual acuity in the right eye was 20/40 and in the left eye was 20/50 with corrective lenses. Pupils were round, equal and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. Breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. Claimant had chest wall tenderness with palpation. There was regular rate and rhythm of the heart without enlargement. There was normal S1 and S2. In her abdomen the bowel sounds were normal and there was no organomegaly or masses. In her vascular system there was no clubbing or cyanosis detected. There was 1+ pitting edema. The femoral, popliteal, dorsal pedis and posterior tibial pulses were decreased bilaterally. Hair growth was absent on the lower extremities. The feet were warm and normal color. There were no femoral bruits. In the musculoskeletal area there was no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting and mild difficulty hopping. Straight leg raise was negative. There was no paravertebral muscle spasm. Range of motion of the joints was full. The cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pinprick.

Reflexes were intact and symmetrical. Romberg testing was painful. Claimant walked with a normal gait without the use of an assistive device. The conclusion was that claimant had fibromyalgia and back pain but there was no significant orthopedic disease and much of her condition appeared to be psychogenic and deconditioning. She would be remedial with appropriate treatment. She had some mild lower extremity edema and her blood pressure was stable.

A Medical Examination Report of [REDACTED] indicates that claimant was 5' 4" tall and 171.9 pounds and her blood pressure was 128/92. Her head was normal. Her neck was normal. Her chest showed a recent bypass surgery scar. Lungs showed slightly diminished breath sounds at the bases. Abdomen was soft. Extremities showed 1+ edema around the ankles. (Page 248)

A [REDACTED] medical report indicates that claimant was a 49-year-old white female who weighed 168 pounds, blood pressure 146/92 and her pulse was 60 beats per minute. Her height was 5' 4". Her head was normal. Her neck was normal. Her chest was symmetrical and her lungs were clear. Her heart sounds were regular. Her abdomen was soft. She had no edema. She was told to quit smoking. (Pages 242 and 243)

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. In the instant case, the claimant's impairments do not meet duration.

Although claimant did have coronary artery bypass grafting on [REDACTED], treatment notes indicate that claimant had a diagnosis of hypertension, back pain, a history of coronary artery disease, angina and fibromyalgia, but the findings reported in the treatment notes were within normal limits or reported mild findings such as mildly elevated blood pressure, trace

pretibial edema and complaint of chest pain while performing mopping. There was no indication of vision loss noted. A note of [REDACTED] indicated that claimant had completed detox for narcotic addiction. 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 claimant has a severely restrictive physical impairment.

Claimant testified on the record that she does have depression and has had it on and off for approximately a year which means that claimant's impairments do not meet duration. There is insufficient objective medical/psychiatric evidence in the file that claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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. 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 work doing clerical work or as a cashier. Cashiers and clerical workers do not perform strenuous physical exertion and there is no medical evidence upon which this Administrative Law Judge can 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 no 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. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Claimant testified on the record that she does continue to smoke a pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant is not in compliance with her treatment program as she does have heart problems and she continues to smoke.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant testified that in a typical day she takes a shower, dresses, does outpatient therapy and goes to a [REDACTED] meeting. Then she goes home and takes a nap and in the evening she goes to a [REDACTED] meeting. She watches babies for community service – a 3-1/2 month old and a 5 month old and she seldom picks them up and usually they are

sleeping while she watches them. This Administrative Law Judge finds that claimant can watch babies, which means that she can probably pick them up and is able to take care of them without supervision. Therefore, claimant should be able to perform light or sedentary work even with her impairments. 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'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, 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: June 29, 2009

Date Mailed: June 30, 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.

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