

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: 2008-27878
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 13, 2008
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Jana 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, a telephone hearing was held on November 13, 2008.

ISSUE

Whether claimant has established disability for Medical Assistance (MA 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) May 7, 2008, claimant applied for MA and SDA
- (2) August 1, 2008, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) August 4, 2008, the department sent claimant written notice that the application was denied.

(4) August 11, 2008, the department received claimant's timely request for hearing.

(5) August 18, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) November 13, 2008, the telephone hearing was held. Prior to the close of the record, claimant requested record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. May 4, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 5-4-09. At hearing, claimant testified that in January 2008 she had a Social Security disability hearing at which the Social Security Administration's (SSA's) denial of her disability was upheld.

(7) Claimant asserts disability based on impairments caused by a bad back, neck impairment, and depression.

(8) Claimant testified at hearing. Claimant is 38 years old, 4'11" tall, and weighs 140 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a fast food crew member and restaurant bus person.

(10) September 27, 2006, claimant underwent a MRI of the lumbar spine and the report was prepared that states the following impressions: Nearly stable exam since 6/2/05 impatient with Grade 1 spondylolisthesis, mild degenerative disc disease, and slight progression in eccentric disc bulge suggesting a small subligamentous herniation in the right posterior lateral aspect of the L5-S1 level, probable bilateral spondylolisthesis, no other abnormality.

Department Exhibit A, pg 852. May 4, 2006, claimant underwent MRI of the cervical spine and a report was prepared that indicates the following impression: Mild degenerative disc disease with small subligamentous disc protrusion at the C7-T1 level in the left paracentral region.

Department Exhibit A, pg 851. February 14, 2006, claimant underwent x-rays of the cervical spine and a report was prepared that indicates the following impression: Recommend clinical correlation to exclude torticollis. There are degenerative changes, particularly at C4-5 with posterior spur formation. Department Exhibit A, pg 850.

(11) On or about May 30, 2008, claimant was examined by her physician. Treatment notes indicate, in pertinent part that claimant had 5/5 strength in the upper and lower extremities. Reflexes 1-2+ symmetric. Straight leg, Spurling's, Hoffmann's negative. Myofascial tenderness in the neck and low back, mildly exaggerated discomfort. Range of motion full and pain free. Doctor indicates the following assessment: Neck pain, lower back pain, chronic pain syndrome. Claimant is to be treated with medication and is encouraged to continue home exercises and walking. Smoking cessation is encouraged. Department Exhibit A, pgs 835-836. August 6, 2008 and August 22, 2008 physician treatment notes indicate similar findings with the exception of claimant has slow gait but is stable without assistive device. Department Exhibit A, pgs 838-839, 841.

(12) July 9, 2008, claimant underwent an independent physical examination and a narrative report was prepared. The report indicates, in pertinent part, the following: Patient appears to be in mild discomfort. Neck is supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. Heart has regular rate and rhythm without enlargement. There is normal S1 and S2. There is no organomegaly or masses. Bowel sounds are normal. No clubbing, cyanosis, or edema is detected. Peripheral pulses are

intact. There is no evidence of joint laxity, crepitus, or effusion. Grip strength and pincher grasp remains intact. Dexterity is unimpaired. Patient could pick-up a coin, button clothing, and open a door. Patient had no difficulty getting on and off the exam table, no difficulty heel and toe walking, no difficulty squatting, and mild difficulty hopping. Straight leg raising is negative. There is paravertebral muscle spasm. There is tenderness over both sacroiliac joints, over left rombled area and left scaling area. Range of motion in the cervical spine is reduced 5 to 20 degrees. Range of motion in the lumbar spine is reduced 5 degrees in dorsal lumbar extension. Left shoulder abduction is reduced by 20 degrees. All other joints tested have range of motion within normal limits. Cranial nerves are intact. Motor strength is reduced to 1/5 power in the left shoulder girdle due to pain in neck. Muscle tone is normal. Sensory is intact to light touch and pinprick. Reflexes are 2+ and symmetrical. Romberg testing is negative. Patient walks with a guarded gait without use of an assistive device. Doctor's conclusion indicates that claimant has neck and back pain that appears to be myofascial and associated sacroiliac pain. Range of motion is diminished in neck apparently due to tenderness over the scalenes and rhomboid area. She also had weakness in her left arm due to this. Dexterity was preserved. Doctor found no evidence of myopathy or neuropathy. Doctor found no radicular symptoms. She does not require the use of an assistive device. Department Exhibit A, pgs 84-88.

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 has been treated for many years for neck and back pain. Department Exhibit A, pgs 1-71. objective medical testing reveals that claimant has Grade I spondylosis, mild degenerative disc disease, and slight progression in eccentric disc bulge at the L5-S1 level with probable bilateral spondylolysis. Claimant has mild degenerative disc disease with a small subligamentous disc protrusion at the C7-T1 level. Claimant has some posterior spur formation at the C4-5 level. Independent physical examination that took place in July 2008 revealed that claimant has significantly reduced strength in her left shoulder with associated reduced range of motion and sacroiliac pain. Claimant has a stable gait. Both the independent physical exam and claimant's treating physician's exam revealed no severe impairments or limitations due to these conditions with the exception of those already discussed above. Finding of Fact 10-12.

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 as a fast food crew member and restaurant bus person. See discussion at Step 2 above. Finding of Fact 9-12. The objective medical evidence of record appears to establish that claimant would have difficulty with the lifting, twisting, and reaching that her past relevant employment requires.

At Step 4, the objective medical evidence of record is 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.

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, see discussion at Steps 2 and 4 above. Finding of Fact 10-12.

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 work activities. Considering claimant's Vocational Profile (younger individual, limited education, and history of unskilled work) and relying on Vocational Rule 202.17, 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.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.

- (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied his 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 and State Disability Assistance.

Accordingly, the department's action is hereby UPHELD.

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

Date Signed: August 5, 2010

Date Mailed: August 10, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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.

JBB/sd

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