

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: 2008-31016
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 15, 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 15, 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)?

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 August 11, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits as well as retroactive Medical Assistance benefits to May 2008, alleging disability.

(2) On August 19, 2008, the Medical Review Team denied claimant's application stating that claimant could perform her prior work.

(3) On August 25, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On September 9, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 24, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant's subjective complaints are out of proportion to the objective findings. The records in the file would suggest that claimant would be able to perform a wide range of light work with the ability to alternate sitting and standing as afforded by normal breaks and lunch. Medical opinion was considered in light of 20 CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. The claimant retains the physical residual functional capacity to perform a wide range of light work. The claimant's past work in security is light as it is normally performed in the national economy. Therefore, the claimant retains the capacity to perform her past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the capacity to perform past relevant work.

(6) The hearing was held on January 15, 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 3, 2009.

(8) On February 10, 2009, the State Hearing Review Team again denied claimant's application and stated that claimant could perform past work and that claimant retains the residual functional capacity to perform to perform at least light work. The claimant's past work as a security guard is typically performed at the light exertional level in the national economy. Therefore, the claimant retains the capacity to perform past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261. The additional information received does not significantly affect the residual functional capacity. The prior State Hearing Review Team decision of September 24, 2008 for past work is upheld.

(9) Claimant is a 48-year-old woman whose birth date is [REDACTED]. Claimant is 5' 9 1/2" tall and weighs 220 pounds. Claimant has an Associate's degree in Criminal Law and is able to read and write and does have basic math skills.

(10) Claimant was last employed in March 2008 for [REDACTED] as an inventory assistant stocking shelves. Claimant has also worked as a security guard, as a correction's officer, as a [REDACTED] officer, and as a communication's officer.

(11) Claimant alleges as disabling impairments: three herniated discs, two bulging discs, myocardial myopathy, a dragging right foot along with loss of sensation and a pinched nerve and depression as well as memory problems.

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 March 2008. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a CT scan of the lumbar spine reported mild bulging at L4-5 and a question of a disc herniation at L1-2. (Page 15) A MRI of the lumbar spine reported disc herniation of L1-2 on the right. (Page 12) X-rays of the lumbar spine reported degenerative disc disease and scoliosis. (Page 14) Multiple testing of [REDACTED] (x-rays of the lumbar spine, the right shoulder; pelvis; chest; CT scan of the brain and CT scan of the cervical spine performed apparently due to her fall) reported no acute changes.

Echocardiogram of [REDACTED] was within normal limits. A Medical Examination Report of [REDACTED] [REDACTED] from a treating physician reported the claimant had normal findings with the exception

of pain in the lower back and numbness in the right leg. (Page 17) Neurosurgeon reports indicated that claimant was seen three times from [REDACTED] to [REDACTED]. The most recent note indicates she had full strength and there was no tenderness over the low back, but there was tenderness over the sacroiliac joint. She was also noted to be using a lot of narcotic pain medications. Her range of motion was noted to be improved. The first note of [REDACTED] reported that her injury was a soft tissue injury and had nothing to do with degenerative disc disease.

A physical examination report of [REDACTED] from the [REDACTED] [REDACTED] indicates that the claimant was a well developed, well nourished female and in no acute distress. Her HEENT was NC/AT, OP and mouth clear with no erythema. She had no papilledema of the eyes. Her neck was supple. Her heart was RRR, S1 S2 heard without murmurs. Her lungs were CTAB, no wheezing or crackles heard. Her abdomen was NT/ND, plus DS. Musculoskeletally there was tenderness to palpation along the lumbar spine. Straight leg raise sign is positive on the right. On the skin no rashes were seen. No sign of dehydration. Her cranial nerves 2 through 12 were intact. Strength was 5/5 in all four extremities, no pronator drift. She had normal light touch, sharp touch, vibration and joint position sensation. Her reflex DTRs were 2+. Plantar reflex showed downgoing toes bilaterally. Cerebellar function was normal WNL bilaterally. Her gait was normal. Mental status was alert, aware and oriented to person, time and place. A MRI of the lumbar spine dated [REDACTED] showed a large six millimeter disc herniation at L1/2 on the right paracentral side. Mild to moderate facet joint arthropathy was seen. Lumbosacral spine x-ray from [REDACTED] showed degenerative joint disease and scoliosis. Claimant's scoliosis was stable. A MRI of the lumbar spine of [REDACTED] indicates that at L2/3 there was no herniation or stenosis. At L3/4 there was no evidence for

stenosis or disc herniation. At L4/5 there was no evidence of stenosis or disc herniation. At L5/S1 again no evidence of stenosis or disc herniation. There may be minimal facet arthropathy at L5/S1, L4/5 levels. There was incidental retroperitoneal pathology. T12/L1 disc space level is again within normal limits. At L1/2 there was no change and in the right side a disc protrusion measuring approximately 6 x 10 x 12 millimeters on both studies producing extrinsic impression upon the thecal sac and slightly narrowing in medial aspect of the right C1 neuroforamen. The disc herniation doesn't have post contrast which is a finding is often associated with eventual resorption. A chest x-ray of [REDACTED] indicates the boney thorax and soft tissues are intact. The cardionediastinal structures are unremarkable. The lung fields were clear. A physical examination from [REDACTED] dated [REDACTED] indicates that claimant was afebrile. Her heart rate was 73. Blood pressure was 137/60. Respiration of 14. Saturation of 98 percent on room air. The claimant's cardiac telemetry currently reveals sinus rhythm. There is no evidence of acute ST/T wave changes. There is no evidence of cardiac dysrhythmias. Her HEENT was atraumatic and normocephalic. There was no evidence of palette or scleral icterus. Nares otherwise unremarkable. Trachea is midline. Cardiac examination indicates that she did reveal a regular rate and rhythm. S1 and S2 were intact. There was no S3 or S4 gallop appreciated. The claimant had a good exchange of air in her lungs and the bilateral lung field indicated no wheezing or crackles. Her abdomen was obese, soft, non-tender and non-distended, and had good bowel sounds. Her extremities were without edema. The claimant was moving extremities passively and actively in both upper and lower extremities. The claimant was awake, alert, and appropriate. Cranial nerves 2 through 12 were grossly intact. No gross deficit appreciated. DTR was equal and symmetrical.

At Step 2, claimant has the burden of proof of establishing 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 to support the report of symptoms and limitations made by the claimant. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. The x-rays, CTs and MRIs indicate claimant does have some lower back pain and does have palpable disc herniation but the objective clinical medical evidence is insufficient to show that claimant has a severely restrictive physical or mental impairment. Claimant has stated that she has severe limitations 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 no evidence in the record indicating claimant suffers mental limitations resulting from her reported 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 testify at the hearing and was responsive to all the questions and was able to answer all the questions. She was oriented to person, time 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. For the record, this Administrative Law

Judge finds that claimant testified on the record that she got injured at [REDACTED]
Claimant's impairments also did not meet duration, as she would not meet duration until at least

[REDACTED]

If claimant had not already been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not rise to a finding that she would meet a statutory listing in the code of federal regulations.

At Step 4, claimant testified on the record that she does have a driver's license but she doesn't drive because of the medication she takes. Claimant testified that she is single with no children under 18 who live with her. Claimant testified that she lives in a house and that she lives alone. Claimant testified that her uncle makes her meals for her and she microwaves and that she grocery shops two times per week and she needs help with reaching and she leans on the cart. Claimant testified that she does get fatigued. Claimant testified that she can walk 50 to 100 feet and that she has a cane and a walker and that she can stand for 5 to 7 minutes and that she can't squat because of her bad balance. Claimant testified that she can sit for half an hour and bend at the waist and shower and dress herself and can tie her shoes if she's sitting but she cannot touch her toes. Claimant testified that the heaviest weight she can carry is a gallon of milk which is kind of heavy and that she is right handed and that her right hand tingles and has numbness and she has sharp pain in her shoulder. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10+ and with medication is a 6 to an 8 on a good day. Claimant testified that she does smoke three cigarettes per day and her doctor has told her to quit and she is in a smoking cessation program.

Claimant testified that in a typical day she gets up and sits on a heating pad and watches the news and she walks around her 72 foot trailer and leans against the door and she holds onto her walker. Claimant testified she eats lunch, smokes, lays down and takes a three hour nap and

then visits with family and then cleans herself up. Claimant testified that she fell and blacked out and was in the hospital overnight in [REDACTED].

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. This Administrative Law Judge finds that claimant could probably work as a security guard even with her impairments, as being a security guard does not require strenuous physical exertion and is considered to be light work. Therefore, claimant is disqualified from receiving disability 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. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Claimant does continue to smoke despite the fact that her doctor has told her to quit. Smoking could definitely affect her alleged heart problems. 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 gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant testified on the record that she does have depression and has memory problems.

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 it so severe that it would prevent claimant from working at any job. In addition, 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. Under the Medical-Vocational guidelines, a younger individual (age 48), with a more than high education and an unskilled work history who is limited to light work is not considered disabled.

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: March 11, 2009

Date Mailed: March 11, 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.

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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:

