

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: 2008-31032
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 3, 2008
Macomb 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 December 3, 2008. 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 September 13, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On May 14, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 31, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On August 5, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 23, 2008, the State Hearing Review Team again denied claimant's application stating that claimant's impairments were non-severe per 20 CFR 416.920(c)

(6) The hearing was held on December 3, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) No additional medical information was submitted and the record was left open until November 16, 2009, at which time the Administrative Law Judge closed the record and moved to decision.

(8) On the date of hearing, claimant was a 55-year-old woman whose birth date is [REDACTED]. Claimant was 5'2" tall and weighs 97 pounds. Claimant had recently lost 29 pounds. Claimant is a GED and was able to read and write and did have basic math skills.

(9) Claimant last worked in 2000 as a self-employed worker. She has also worked at a dry cleaner and as a caterer in a bakery.

(10) Claimant alleged as disabling impairments: lupus, diabetes mellitus, depression, anxiety, as well as asthma, arthritis, and degenerative joint disease.

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 had not worked for 12 years on the date of hearing. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] medical report dated [REDACTED] indicates that upon physical examination claimant was well-developed, well-nourished, well-built, well-cooperative, and not in acute distress. Her speech was intelligible. Vital signs were: Height 5'1", Weight 110 pounds, Pulse 118 initially and subsequently 78. Respiratory rate was 16. Blood was 110/62. Visual acuity without glasses was 20/100 on the right and 20/50 on the left. Both eyes were 20/50 and with glasses 20/30 on the right and 20/30 on the left and both eyes 20/30. The claimant walked without an ambulatory aid. Gait was normal. Functional capacity of walking was 2-3 miles. HEENT: Normocephalic/atraumatic. Eyes: Lids were normal. There was no exophthalmos, icterus, conjunctival erythema,

or exudates noted. PERRLA: Extraocular movements were intact. Ears: No discharge in the external auditory canals. No bulging, erythema, perforation of the visible portion of the tympanic membrane noted. Nose: There was no septal deformity, epistaxis, or rhinorrhea. Mouth: The teeth were in fair repair. No ulcerations of the tongue or throat. No gingivitis. Neck: The neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. No accessory muscle usage. Thyroid was not visible or palpable. Respiratory: The chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi, or wheezes noted. No retraction of intercostal muscles noted. No accessory muscle usage noted. No cyanosis or clubbing of the fingers noted. There was no tachypnea or tachycardia. Cardiovascular: There was regular rate and rhythm. There was normal S1, normal S2, no S3 and S4, no murmur or gallop audible. There was no palpable thrill. Gastrointestinal: There was a vertical scar over the epigastrium extending from the epigastrium to the umbilicus. There was another scar in the right iliac fossa and a transverse scar in the lower abdomen. Abdomen: Abdomen was non-distended, soft, non-tender with no rigidity or guarding. No rebound tenderness. No organomegaly. Liver and spleen were not palpable. Bowel sounds were present. No hernias. Skin: She had hypo-pigmented patches over both upper extremities, multiple patches with no evidence of any infection. There was reddish skin over both legs. Extremities: Her pedal pulses were 2+ bilaterally. There was a pedal edema, 2+ in the pretibial region, pitting on pressure. There was reddish skin extending from the ankle to just below the knee joint with marked induration and thickening of the skin. There was brawny edema. There were no varicose veins or chronic leg ulcers. There was no active discharge or active ulcers. Bones and Joints: The claimant was able to get from the chair and go to the table without assistance. There was no paravertebral spasm noted. No muscle wasting or deformity of the spine noted. Straight leg

raising was negative to 90 degrees bilaterally. Patrick's test was negative bilaterally. The claimant was able to walk on heels and toes well. The claimant was able to squat and arise from a squatting position completely. Hand grip strength and pinch strength were normal and equal in both hands. The claimant could button and unbutton clothing normally with both hands. Gross and fine dexterity were intact in both hands. Neurologic: The claimant was alert, awake, and oriented to person, place, and time. Cranial nerves II-XII were intact. Sensation was intact to touch, pain, pinprick, temperature, deep sensation, and vibration. Motor power was 5/5 in all extremities. There was good muscle tone with flaccidity, spasticity, or paralysis. Deep tendon reflexes were 2+ bilaterally in the upper and lower extremities. Cerebellar signs were intact. Finger-to-nose test was done well. Tandem walk, heel walk, and toe walk were done well. Gait was steady without the use of ambulatory aid. The diagnosis was skin lesions, hypo-pigmented patches over both forearms, fibromyalgia, and generalized arthritis. (pp. 2-3)

A Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination and that she was 5'1" and 110 pounds and her blood pressure was 100/62. The clinical impression was that she was stable and had no physical limitations and she had no mental limitations. (pp. 4-5)

A Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination except she had limited range of motion due to skin lesions, arthritis, lupus, and she was anxious, stressed and depressed. She was 5'2" and 113 pounds and her blood pressure was 110/70 and she was right-hand dominant. (p. 11) The clinical impression was that she was deteriorating in 2007 and that she could occasionally lift less than 10 pounds, but never lift 10 pounds or more and that she could stand or walk less than 2 hours in an 8-hour day, and could sit less than 6 hours in an 8-hour workday. She did not need assistive devices for

ambulation. Claimant could do simple grasping and reaching with both upper extremities but not pushing/pulling and fine manipulating. Claimant could not operate foot and leg controls with either foot/leg. (p. 12)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The DHS-49, Medical Examination Report, indicates that claimant was normal in all areas of examination. There are no laboratory or x-ray findings listed in the file. The DHS-49 indicates that assistive devices are not medically needed or required for ambulation. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating claimant suffers mental limitations resulting from her reportedly manic and depressive 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.

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).

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 the record is insufficient to find that claimant suffers a severely restrictive mental impairment and that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was light work. Claimant testified on the record that she can walk a half a block to the mailbox, stand 2 hours, and sit for 3-4 hours at a time. Claimant is able to shower and dress herself, but could not squat or bend at the waist because she was afraid to tear a lesion. Claimant could carry 10 pounds and she is left-handed and she gets cramps and her knuckles swell. Claimant testified on the record that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 5. Claimant testified that in a typical day she takes her medications and goes to the bathroom and sits and waits for the pain to lessen. She puts

dishes in the dishwasher, watches television in the evening 4-5 a day and reads for 10 hours and cries a lot.

This Administrative Law Judge finds that there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant'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. In addition, claimant did testify that she does receive some relief from her pain medication. 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, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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: February 8, 2010
Date Mailed: February 8, 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 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:

[REDACTED]