

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: 2009-10536
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 21, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 April 21, 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 July 17, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 26, 2008, the Medical Review Team denied claimant's application stating her impairment(s) are not severe.

(3) On November 26, 2008, the department caseworker sent claimant notice that his application was denied.

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

(5) On January 27, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating claimant was capable of performing other work, namely unskilled work per 20 CFR 416.968(a) and Vocational Rule 204.00. SHRT also stated that Drug and Alcohol Abuse is material per 20 CFR 416.935.

(6) Claimant submitted additional medical information following the hearing, and this information was forwarded to SHRT for additional review. On July 21, 2009, SHRT once again determined that the claimant was capable of performing medium unskilled work and cited Vocational Rule 203.25.

(7) Claimant is a 46 year-old woman whose birth date is [REDACTED]. Claimant is 5' 8 ½" tall and weighs 169 pounds after gaining 40 lbs. in the last 5 months due to medications she is on. Claimant attended the 9th grade and does not have a GED. Claimant is able to read, write and do basic math.

(8) Claimant is not currently employed and states that she last worked 20 years ago in commercial cleaning. Claimant further states that her grandmother took care of her, and after her grandmother went to a home, a boyfriend took care of her but he died. Claimant currently lives at friends' houses and receives FAP.

(9) Claimant alleges as disabling impairments bi-polar disorder with “schizophrenic tendencies”.

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).

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).

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 does 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 testified that she has not worked in the last 20 years. Claimant is not disqualified from receiving disability at Step 1.

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 duration of at least 12 months.

The objective medical evidence on the record includes Common Ground Sanctuary records from February and September, 2000 showing claimant's daily use of heroin. In February, 2000 claimant was brought by ambulance and an emergency psychiatric triage assessment was done. Claimant stated she did not want to live anymore, that she was angry at her boyfriend, and that she wanted to have strong medicine to calm her nerves down. Claimant stated that she had been off methadone for several days, and also that she has increased her heroin abuse while being treated with methadone. In September, 2000 claimant was depressed and stated she was in methadone treatment but could not afford it so she used heroin so she would not get sick.

In December, 2005 claimant arrived to [REDACTED] by ambulance from emergency room after being taken there by friends because she voiced suicidal ideations and threatened to take a bottle of medication. Claimant was sent there with a petition and clinical certificate from the hospital after medical clearance. Claimant reported long history of heroin addiction claiming she started using 2 years ago on a daily basis, and desired to quit. Claimant further stated she had not slept for 2 days and that she takes Xanax to calm the anxiety she feels after using heroin. Claimant was unemployed and living off money she gets from her grandmother. Claimant was found not to be severely disabled according to the scoring chart, and not eligible for Enhanced Service Selection, but was instead to be referred to appropriate community resources.

Medical Examination Report of [REDACTED], by a doctor of internal medicine indicates that the claimant can lift/carry up to 10 lbs. occasionally, stand and/or walk less than 2 hours in an 8-hour work day, that she has problems using her hand/arms for most of repetitive

actions and cannot use neither foot/leg for operating foot/leg controls, and that she is limited in sustained concentration and social interaction.

Same doctor has also prepared a detailed report quoting the claimant as saying she is crying all the time and stays at home away from other people. Claimant also reported having self mutilating behaviors (stabbing her arms) and that she was in emergency room three weeks ago for this reason. Claimant further reported she had been off heroin for the last year and that she is now on methadone and Xanax. Claimant stated she has low back pain not radiating to her legs, mostly dull pain especially on buttock area, because she fell in jail when she was 19 years of age. All of exam areas were normal with only mild stiffness of the neck and left ankle swelling. Claimant was oriented to time, place and person with no confusion, her attention span was poor with easy distractibility, judgment and insight were intact, abstract thinking was good, memory remote and recent was intact, and affect was depressed. Diagnosis was that of history of heroin abuse, currently on methadone, withdrawal seizures, tobacco abuse, bipolar depression, anxiety-panic episodes and ADD.

Psychological Evaluation of [REDACTED], describes the claimant as having good hygiene and grooming, not showing any odd mannerisms or peculiar behaviors, and making good eye contact with the examiner. Claimant stated she had been depressed since she was 8 years old and that she was diagnosed with bipolar disorder and ADHD at age 26. Claimant further stated she does not sleep well; she has panic attacks and finds it hard to leave her house. Claimant reported she had used heroin daily but went to a methadone clinic and an alcohol and drug rehabilitation clinic and has been clean for the past year. Claimant blamed her family for all of her failures, did not take responsibility for her mistakes, and did not think heroin made a negative impact on her life as she rationalized her behavior by saying that she had to “self-

medicate” because she was not getting any help. Claimant did not display any distorted and eccentric thinking, did not show any peculiarities of thoughts, and while she reported a history of auditory hallucinations her symptoms were vague. Claimant’s speech was clear and coherent and not pressured, she was able to express herself well and her receptive language was appropriate. There as no flight of ideas, circumstantiality or tangentiality typical of a mental illness, no loose associations, no variation in her style of thought processes, the topic of speech and thought did not fluctuate and they were well connected. Claimant did not show evidence of a thought disorder consistent with mental illness, and there were no peculiarities in her thought process. Claimant’s memory seemed impaired, and while she had no difficulty concentrating effectively for short periods of time, at times she needed additional time to complete a task. Examined concluded that while the claimant states she was diagnosed with bipolar disorder and ADHD in the past, during this evaluation she did not indicate any symptoms that are consistent with these diagnosis. Instead it appears she suffers from Dysthymic Disorder, the essential feature being chronic depressed mood that occurs all the time. It also appeared that claimant’s heroin addiction compounded her pre-existing emotional problems, and while she claimed she had not used heroin for the last year she stopped going to treatment three weeks ago because her counselor suggested that she continue to take methadone. Due to claimant’s bouts of depression, mild to moderate psychomotor retardation, she is restricted to work that involves brief, superficial interactions with coworkers, supervisor and the public. Claimant is subject to relapses and examiner suspected the pressure of employment would be a major factor that would result in decompensation on her part. Diagnosis was that of Dysthymic Disorder and Opioid Dependence, in partial remission.

Psychiatric Evaluation Report of [REDACTED], states that the claimant came to [REDACTED] on her own claiming she needs help because now that she is off drugs she feels like she is a little kid. Mental Status Examination describes the claimant in no acute distress, but tearful, extremely anxious and fidgety during the interview. Claimant is verbal, relevant, and coherent, although she kept saying that she could not remember things, but responded to questions appropriately. There was no pressure of speech or poverty of speech. There was no looseness of association or flight of ideas, and claimant denied any visual or auditory hallucinations during the time of the interview. Claimant also denied any suicidal or homicidal thoughts during the interview. Psychiatric Diagnostic Impressions were that of bipolar affect, depression-unspecified, prolonged posttraumatic stress, cocaine and alcohol abuse in remission, and opioid dependence-unspecified. Recommendations were that claimant continue outpatient follow up care with Case Management, and be referred for Substance Abuse Assessment and Treatment. Claimant agreed to start taking Abilify and Seroquel.

Claimant has not provided any more current psychiatric, psychological, Case Management follow up or substance abuse assessment or treatment reports after February, 2009. Therefore, it appears she has not followed up on such recommended treatment. Claimant testified that she currently takes ½ methadone pill per day that someone gives to her, that she smokes half a pack of cigarettes per day, but that she no longer drinks alcohol or uses heroin.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. No medical evidence to support severe physical restrictions cited in Medical Examination Report of October, 2008 has been provided. Psychological records show claimant's long term heroin abuse appears to be the main issue that has caused her inability to handle life situations and be gainfully employed. Claimant states she

no longer uses heroin or any other drugs as of 1 ½ year ago. Claimant's only hearing statement regarding her physical issues is that she has back pain due to jumping 20 feet when she was in jail; however it appears from the medical record this happened when she was 19 years of age. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about her physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers significant mental limitations. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. 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 trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would be unable to make a determination as to whether she could do her past relevant work, as the claimant testified she had not worked for the last 20 years.

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 other 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).

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).

Claimant has submitted insufficient objective medical evidence that she is physically unable to do at least medium work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 sedentary, light and medium work, or possibly even heavy work. Even if severe restrictions cited in the medical report of October, 2008 and unsupported by any other evidence of record lead to the conclusion that the claimant can only do sedentary work, under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 46), with limited education and an unskilled work history or no work history at all is not considered disabled pursuant to Medical-Vocational Rule 201.19. No evidence has been presented to show claimant could not perform more than sedentary work, as neither her physical impairments nor mental impairments would prevent her from doing unskilled work.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical

documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 sedentary, light and medium work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 1, 2009

Date Mailed: September 8, 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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