

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: 2009-10850

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 22, 2009

Ottawa 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 April 22, 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 January 16, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability. Claimant also filed a retroactive Medical Assistance application to October 2007.

(2) On April 22, 2008, the Medical Review Team approved claimant's State Disability Assistance benefits with an October 2008 review date and denied claimant's Medical Assistance benefits.

(3) On December 8, 2008, the department caseworker sent claimant notice that her application for Medical Assistance benefits was denied.

(4) On December 11, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 3, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.21. The State Hearing Review Team commented that the MRT denial dated November 25, 2008 is not in the file. In April 2008 the State Disability Assistance was approved (page 103). In May 2008 the MA-P was denied and SDA approved (page 119). In July 2008 the SDA was approved again (page 143). Records indicate the MRT denied in November 2008 but that DHS-49A form does not appear to be in the file. A medical decision was made by SHRT based on the medical information in the file. The new application for MA-P is denied and review of State Disability Assistance benefits is also denied.

(6) Claimant is a 53 -year-old woman whose birth date is [REDACTED] Claimant was 5' 3" tall and weighs 200 pounds. Claimant recently gained 40 pounds. Claimant is a high school graduate and has one year of vocational school where she studied phlebotomy but did not get certified. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked December 2007 as a cashier. Claimant has also worked as a deli clerk, sorting packages and running machinery in the past.

(8) Claimant alleges as disabling impairments: lupus, post-traumatic stress disorder, bipolar disorder, low thyroid/Grave's disease, arthritis, panic attacks as well as depression and anxiety and a fracture of L2.

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 employed and has not been employed since 2007. Therefore, she is not precluded from receiving disability benefits at Step 1.

The objective medical evidence on the record indicates that a DHS-49 form dated [REDACTED] indicates that claimant had examination areas that were all normal except that she had upper extremity strength of 3-4/5 bilaterally and she had a flat affect and a murmur in her cardiovascular system. Claimant's height was 62-3/4" tall and she weighed 162 pounds and her blood pressure was 148/76. Her condition was considered to be deteriorating and she was hospitalized [REDACTED]. (Pages 77 and 78)

On [REDACTED], claimant was examined and was found to be a well-developed, well-nourished 52-year-old white female who was lying on the cart in no apparent distress. Her vital signs were blood pressure 182/93 and her pulse was 115, respirations 16, temperature 98.2 degrees, pulse oxygen was 94 degrees on room air. Her skin was pink, warm and dry and there was no rash or bruising. Her HEENT she had no conjunctivitis, tympanic membranes were pearly gray. There was no rhinorrhea. Mucous membranes were moist. Pharynx was without erythema. No exudate or lesions. Her neck was supple and there was no adenopathy. Claimant's lungs and chest were clear. Claimant's heart was tachycardiac with no murmurs. Her bowel sounds were present in her abdomen and her abdomen was soft and non-tender. There were no swollen or warm joints in her extremities. Radial and dorsalis pedis pulses were 2+ bilaterally. Trace pedal edema. No calf tenderness. Homan's was negative. Neurologically, she was alert and oriented x3. There were no focal neurologic deficits present. Her diagnostic data and impression was a lupus flare-up. She was given a prescription for Tylenol with codeine #3 and prednisone and discharged in stable condition. On [REDACTED], she again appeared at [REDACTED] and her ten-point review of systems negative other than as stated in the HPI, other than

significant fatigue. Her physical examination was a somewhat elderly appearing 52-year-old female who appeared tired but at the same time nervous. Blood pressure was 172/78. Heart rate was 101; respiratory rate was 16; temperature 99.1. Oxygen saturation was 93% on room air. She rated her pain as 8 out of 10. Her HEENT was unremarkable. Her neck was soft and supple and there was no lymphadenopathy. No JVD or thyromegaly or nuchal rigidity. No posterior cervical spine pain. Her lungs were clear to auscultation bilaterally without wheezes or crackles. She had good and equal breath sounds. Her heart was mildly tachycardiac; otherwise regular rhythm without murmur, rub or gallops. Her abdomen was soft, not tender or distended. Normal active bowel sounds. No masses palpated. No organomegaly was noted. No guarding or rebound. Her back was generally tender but no focal pain over the thoracic or lumbar spine. In her musculoskeletal area she had pain with palpation over the SI joints, bilateral hips, as well as the major muscle groups of the upper and lower extremities; and just general pain in the knees with flexion and extension but no obvious erythema, swelling, ecchymosis or obvious deformities. In her neurological condition she was alert and oriented x3. Her cranial nerves II-XII were intact and her motor and sensory functions were grossly intact. (Page 136)

In a [REDACTED] examination mental status examination of [REDACTED] claimant appeared her stated age. She was alert and oriented. She made good eye contact and she was dressed casually and her grooming and hygiene were adequate. Her speech was relevant, goal-directed and non-pressured. Her thoughts were organized. There was no evidence of delusional thinking. She did not report any auditory or visual hallucinations, obsessions, compulsions or other psychotic distortions. She was not having nightmares or flashbacks. Her anxiety was under control. Her mood was euthymic. Affect was broad. She denied suicidal or homicidal ideation. She was able to contract for safety. Her judgment and insight were adequate.

Her memory, concentration and cognition were intact. She was diagnosed with a bipolar II disorder, post-traumatic stress disorder, alcohol dependence in full sustained remission and lupus, arthritis and her GAF was 45. (Pages 140 and 141)

A mental status examination of [REDACTED] indicates that claimant appeared her stated age. She was alert and oriented and making good eye contact. She was dressed casually. Her grooming and hygiene were adequate. Her speech was soft in volume but relevant, goal-directed and non-pressured. Her thoughts were organized. There was no evidence of delusional thinking. She was not reporting auditory or visual hallucinations but she had occasional nightmares and frequent flashbacks. There were no obsessions or compulsions or other psychotic distortions. Her mood was euthymic and her affect was blunted. She had passive suicidal thoughts but no plan or intent. She did contract for safety. Her judgment and insight were adequate. Her memory, concentration and cognition were intact. She could be impulsive, especially with respect to overusing her medications when anxious. A [REDACTED] [REDACTED] letter signed by a licensed medical social worker indicates that claimant has been a consumer of services at [REDACTED] since [REDACTED]. Her current diagnoses include bipolar II disorder, post-traumatic stress disorder and alcohol dependent in full sustained remission for over two years. She had been employed at an area gas station/convenience store until early January 2008. This employment situation was a difficult experience as a co-worker and various customers resembled the abuser from her past. She experienced flashbacks and nightmares which were a barrier to achieving mood stability. At this time, she is working on the issue of post-traumatic stress disorder as well as maintaining her remission from alcohol dependence. She also was diagnosed with medical issues that include

lupus that results in chronic pain. The claimant does not present as a good candidate for employment at this time due to multiple health issues in her life. (Page 166)

A DHS-49 form dated [REDACTED] indicates that claimant can stand or walk less than two hours in an eight hour day and sit about six hours in an eight hour day. She could occasionally lift 10 pounds or less but never lift 20 pounds or more. She could use both of her upper extremities for simple grasping, reaching, and fine manipulating but not pushing/pulling. She could not operate foot and leg controls because of her chronic lupus flare-ups. She was 5' 3-1/2" tall and weighed 191 pounds and her blood pressure was 140/84. (Pages 159 and 160)

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 are expected to last for the duration of at least 12 months. There is insufficient objective clinical medical/psychiatric 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. Although claimant has been diagnosed with lupus, and this is a disease that has flare-ups, none of the medical reports indicate that she has any severe physical impairment. There is no 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 or mental impairment or combination of impairments.

There is no evidence on the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record which indicates that claimant is other than oriented to time, person and place. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant should be able to perform as a deli clerk at [REDACTED], as a cashier or as a person who sorts packages as long as she remains compliant with her medication and does not drink alcohol. 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 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 at least sedentary tasks if demanded of her. Claimant does retain bilateral manual hand dexterity and her doctor has stated that she can sit at least six out of eight hours a day. Claimant's activities of daily living do not appear to be very limited. Claimant did testify that she does cook two times per week and cooks things like chicken and potatoes and soup in the microwave and that she does grocery two times per month but needs

help with the heavy items. Claimant testified that she does clean by wiping down, cleaning the kitchen, doing the laundry and making the bed and that her hobby is reading. Claimant testified that she can walk from the car to the building which about a half a block and that she can stand for 15 minutes at a time and sit for 45 minutes at a time. Claimant testified that she is able to shower and dress herself and tie her shoes but not touch her toes. Claimant can bend at the waist but not squat because of her back and knee joints. Claimant testified that the heaviest weight she can carry is 7-10 pounds and she is right handed and that she does have some arthritis and some pain but her legs and feet are fine. Claimant's level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 5. Claimant testified that she does smoke a half a pack of cigarettes per day and her doctor has told her stop but she is not in smoking cessation program. Claimant also testified that she has been three years without alcohol and she is a recovering alcoholic.

This Administrative Law Judge finds that claimant does continue to smoke and is not in compliance with her treating 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). In addition, the information in the file indicates that claimant does sometimes over medicate herself which is also not in compliance with her treatment program.

Claimant also testified that in a typical day she plays video games on the computer for about two hours and watches television and talks to her fiancé. She watches television about six hours a day and she doesn't have a lot of energy. She usually eats a banana and she's a sweet junkie and then she goes to bed. Claimant testified that she has no sex because she has no desire.

Claimant also testified that she does have a bipolar disorder and post-traumatic stress disorder as well as depression because she used to be abused.

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 is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports, it is documented that she used to have heavy use of alcohol as well as alcohol withdrawal which could have contributed to her physical and any alleged mental problems. 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.

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: May 19, 2009

Date Mailed: May 26, 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

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