

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: 2009-12879
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Washtenaw 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, an in-person hearing was held on March 25, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits?

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 December 20, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits.

(2) On July 14, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 21, 2008, the department caseworker sent claimant notice that her application was denied.

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

(5) On March 4, 2009, the State Hearing Review Team denied claimant's application stating that it has insufficient evidence and commented that the claimant has a history of chronic pancreatitis with pancreatic pseudo cyst that perforated her right colon. She underwent a partial colonic resection of the splenic flexure and a Hartman's procedure in [REDACTED]. She was admitted again in [REDACTED] for drainage of residual abscess. (Page 19) She also had a history of alcohol abuse and cirrhosis. (Page 41) In [REDACTED] she was doing well. (Page 18) But in [REDACTED] she was admitted again for partial bowel obstruction. (Page 20) There is no medical information in the file since the [REDACTED] admit. Additional medical records would be helpful in evaluating how the claimant is currently doing. Please obtain updated medical records from the claimant's treating medical sources and discharge charge summaries from any hospitalizations from July 2008 to current. (Page 496 and 497)

(6) The hearing was held on March 25, 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 March 26, 2009.

(8) On April 14, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909 and commented that the conditions improved with treatment and did not preclude all work.

(9) Claimant is a 39-year-old woman whose birth date is [REDACTED]. Claimant was 5' 6" tall and weighs 150 pounds. Claimant gained 20 pounds and lost 40 pounds. Claimant is a high school graduate and currently attends [REDACTED] Monday through Thursday from 6:00 to 10:00 at night.

(10) Claimant is employed as a caretaker making [REDACTED] as a home healthcare aide. Claimant testified that she was unable to work from [REDACTED] through [REDACTED] when she was ill.

(11) Claimant alleges as disabling impairments: hypertension, pancreatitis, substance abuse-alcohol, a colostomy, asthma, cirrhosis, peritonitis, and depression.

(12) Claimant's representative indicated that claimant was asking only for a closed period of disability medical assistance from [REDACTED] through [REDACTED].

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 working as a caretaker home healthcare aide making approximately

██████████ Claimant assists an elderly man with grooming and bathing and makes certain to keep his financial records. Claimant is disqualified from receiving disability at Step 1 because she is substantially gainfully employed. However, claimant's representative had asked for a closed period of time from ██████████ through ██████████. Claimant is disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant currently has no limitations in her physical abilities. Claimant can walk a mile and is not limited in how long she can stand or sit. Claimant testified that she is not limited currently and that she has no pain. Claimant testified that in a typical day she gets up at 4:00 in the morning and makes breakfast and packs her lunch and then she goes to bed until 9:00 a.m. and gets up and gets her mother-in-law coffee and she does her homework and studies and sets up dinner and she goes to school, comes home and goes to bed. Claimant testified that she could do none of those things when she was sick. A ██████████ discharge order indicates that claimant's principle diagnosis was

deconditioning and secondary diagnosis was liver and renal failure. (Page 3) Claimant testified that she drank a fifth to a half gallon of vodka per day and stopped on [REDACTED] when she went into the hospital.

At Step 2, this Administrative Law Judge finds that a Medical Examination Report of [REDACTED] indicated that claimant was normal in all areas except for her abdominal where she had ascites, scars and a colostomy. Claimant was 66" tall and weighed 154.4 pounds. Her blood pressure was 123/79. Claimant was improving and stable since her hospitalization in the [REDACTED] [REDACTED] and did not need assistive devices for ambulation. (Pages 15 and 16)

On [REDACTED], claimant did not need special transportation or need somebody to accompany her to medical appointments. She did not have a medical need for assistance with any personal care activities and her diagnosis was chronic pancreatitis and cirrhosis. (Page 17) A [REDACTED] physical examination indicated that her temperature was 97.2 and her heart rate was 97. Her respiratory rate was 18. Blood pressure was 96/58. Pulse oximetry was 98 on two liters. Sclerae were mildly icteric. She opened her eyes to voice. She was slightly somnolent but was following commands. Her heart had a regular rate and rhythm. Her lungs had bilateral rales and wheezing. Her abdomen was mildly distended. It was soft. It was mildly tender diffusely. There was no guarding. There were no abdominal wall hernias. Her midline incision was well healed. Her jejunostomy tube was in place. Her extremities had bilateral 2 to 3+ edema on her lower extremities. Laboratory examination studies included a white blood count of 21.3, hematocrit was 25.2 and platelet count was 158. Lactic acid was 1.5, PT was 23.7, INR was 1.84 and PCT was 36.8. Amylase was 88 and lipase was 73. Liver function test revealed albumin of 1.2, total protein was 5.3, AST and ALT was 46 and 14. Alkaline phosphatase has 281. Total

bilirubin was 2.5 and direct bilirubin was 1.8. A chest x-ray showed bilateral diffuse alveolar air space disease. There was a question of pneumonia versus acute respiratory distress syndrome. The CT scan of the abdomen and pelvis showed a left pleural effusion and bilateral alveolar air space disease. There was also a significant amount of fluid on her abdomen and fluid over her left upper quadrant as well as right lower quadrant, as well as the pelvis. There was no evidence of bowel obstruction. There was a mild amount of thickening over the distal side of her colon which was very close to her ostomy site. There was no gas within those fluids. The impression was that claimant was 38-year-old woman with end stage liver disease and a history of chronic pancreatitis secondary to alcoholism. (Page 30 of the medical reports)

At Step 2, the objective medical evidence on the record indicates that claimant has not established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more. From the evidence indicated on the record and on the medical forms, claimant is a substance abuser, using heavy alcohol by her own admission. Claimant testified on the record that she used to drink quite extensively but has stopped drinking a fifth to a half a gallon of vodka per day. Claimant is, therefore, disqualified from receiving disability at Step 2, because she has not established that her severe impairments or combination of impairments have lasted the durational requirement of 12 months or more or have kept her from working for 12 months or more. However, since the claimant testified on the record that she had complications as well as asthma and cirrhosis, this Administrative Law Judge will proceed through the sequential evaluation process for the sake of argument since Step 2 is a *de minimus* standard.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, claimant does not have any limitations in her ability to walk, stand or sit and is able to shower and dress herself, squat, bend at the waist and tie her shoes. Claimant has recovered from her illness. Claimant is currently employed as a home healthcare aide assisting an elderly gentleman with dressing, grooming and bathing which indicates that claimant can perform her prior work. 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).

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)

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 medium, 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. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform medium, light or sedentary work. Claimant testified and her representative alleged that claimant is only seeking disability for the months of [REDACTED] through [REDACTED]

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and drug abuse. Claimant did testify that she stopped using cocaine, crack and marijuana in [REDACTED] and she stopped drinking heavily on [REDACTED] when she went into

the hospital and received a colostomy on [REDACTED]. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999, which indicates that an individual should not be considered to be disabled for purposes of this title if alcoholism or drug addiction for this sub-paragraph be a contributing factor material to the determination of disability. In this case, even if claimant were to be considered disabled, her substance abuse was material to her alleged impairments and alleged disabilities.

Claimant testified on the record that she does have depression because she had bills and felt worthless.

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 report, it is documented that she had heavy use of alcohol as well as alcohol withdrawal which would 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 all the questions. Claimant was oriented to time, person and place during the hearing.

Claimant did not really did not any complaints of pain, but this Administrative Law Judge finds that any 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 a younger individual (age 39), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled. It should be noted that claimant is able to attend school from 6:00 to 10:00 at night and also to work for an elderly gentleman helping him take care of his financial records and with his grooming and bathing.

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: April 27, 2009

Date Mailed: April 27, 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.

LYL/vmc

cc:

