

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: 2009-12974

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 20, 2009

Wayne 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 May 20, 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)?

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 4, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On January 6, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 9, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On January 13, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 27, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and that the Social Security Administration has scheduled a consultative internist examination for [REDACTED] and the Social Security Administration needs to be contacted for a copy of the examination.

(6) The hearing was held on May 20, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) On June 30, 2009, the additional medical information was received and sent to the State Hearing Review Team for further review.

(8) On July 7, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work and stating that claimant retains the residual functional capacity to perform at least unskilled, light work. The claimant's past work was unskilled, light (lunch monitor). The claimant retains the capacity to return to her past relevant work.

(9) Claimant is a 59-year-old woman whose birth date is [REDACTED]. Claimant is 4' 9" tall and weighs 107 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant is able to read and write in Hindi and in English, and she has been a citizen of the United States for 13 years.

(10) Claimant was currently employed 1-1/2 hours per day as a lunch monitor for the [REDACTED] earning [REDACTED] per day. Claimant has also worked in a factory.

(11) Claimant alleges as disabling impairments: diabetes mellitus, arthritis, depression, and right shoulder pain.

### 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).

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 even though she does work 1-1/2 hours per day as a lunch monitor. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant's height is 55-1/2" tall and she weighed 114 pounds and her pulse was 72 per minute. Her respiratory rate was 16 per minute. Her blood pressure was 142/86 and her vision without glasses was 20/200 bilaterally.

Vision with glasses was 20/25 bilaterally. The examination was conducted [REDACTED]. Her pupils were equal and reactive. There was no jaundice or pallor. There was no throat redness. Neck was soft and supple. There was no thyromegaly or lymphadenopathy. There was no carotid bruit or jugular venous distention. The lungs were clear with good air entry bilaterally. Percussion was normal. There was no bronchial breathing. No accessory muscles of respiration were used. There was no cyanosis or clubbing noted. The cardiovascular area – first and second heart sounds rhythm was regular. Peripheral pulses were palpable. Lungs did not show pitting edema. There was no calf tenderness. The abdomen was soft and non-tender. There was no rebound, guarding, or hepatosplenomegaly. Bowel sounds were positive. Claimant was alert, awake, and oriented x3. Her speech was normal. Cranial nerves III through XII appeared to be intact. Power was 5/5 in all four limbs. Muscles and tone were normal in the upper and lower extremities bilaterally. Deep tendon reflexes were intact and symmetrical in the upper and lower extremities bilaterally. Gait showed a limp with walking. The claimant could get up on the examination table independently. The claimant could not walk on heels or toes. The musculoskeletal system – hands did not show any synovitis. There was decreased range of motion of the right fourth finger due to a previous fracture. The rest of the fingers showed normal range of motion. Wrists and elbows did not show any swelling, redness, or tenderness. Range of motion was normal. Right shoulder showed tenderness on the lateral aspect with no swelling, redness, or heat. Range of motion was significantly decreased. Left shoulder showed no swelling, redness, or tenderness with normal range of motion. Cervical spine and lumbosacral spine did not show tenderness or spasms. Range of motion was normal. Hips did not show any redness, swelling, or tenderness. Range of motion was normal. Knees bilaterally showed bony

enlargement with tenderness on the medial and lateral aspect with decreased range of motion due to pain. No joint effusion was noted. Crepitus was felt on movement of the knee joints. Ankles did not show swelling, redness, or tenderness with normal range of motion. Claimant was assessed to have severe osteoarthritis with bilateral knee pain, right shoulder pain with a frozen shoulder, diabetes type II, hypertension, hyperlipidemia, and depression. (Pages 4-7)

A psychological evaluation of [REDACTED] indicates that claimant's husband drove her to the clinic. She was on time for her appointment. She was 55-1/2" tall and weighed 113 pounds. She was neatly dressed and groomed. She was cooperative. Her eye contact was good. She is able to do her housework and cooking. Her husband helps her do the laundry. She prays daily. She takes a nap in the afternoon and when she rises she makes tea. She watches the news. She was contact with reality. Her self-esteem was poor. Her motor activity was slow. She was dependent. Motivation was fair. The claimant's speech was spontaneous, logical, and organized. She denied having hallucinations, delusions, persecutions, or obsessions. She does have feelings of worthlessness. She has prayed that she will be taken. Claimant's affect was appropriate for her mood of depression. She was oriented to time, person, and place. For her immediate memory, she could remember four numbers forward and two numbers backward. She could recall two of three objects after three minutes. The past presidents she stated were Obama and Bush and her birth date is [REDACTED]. When asked to name five large cities, she stated Detroit and New York. A famous person was Obama and she didn't know any famous events. Calculations – subtracting 7's from 100, add and multiplying single digits. She could not do serial 7's –  $20-3=17$ ,  $14$ ,  $11$ ,  $8$ , and  $5+3=8$ ,  $6+5=11$ . She could not multiply. She answered I don't know to the abstract thinking of the "the grass is always greener on the other side of the fence" and also answered I don't know to "don't cry over spilled milk". When asked how a bush and tree were



alike and how they were different she said that they both had roots and they were different because one is taller. When asked what she would do if she found a stamped-addressed envelope, she said she would put it in the mailbox and if she discovered a fire in a movie theater she would call the police. She was able to understand, retain, and follow simple instructions and was generally restricted to perform a simple, routine, repetitive, concrete, tangible tasks. Claimant could have interactions with coworkers, supervisors, and the public. This [REDACTED] statement was based upon the disclosed and observed conditions and impairments of the claimant. (Pages 15-17)

The DHS-49 in the file indicates the claimant's condition was deteriorating and that she could occasionally lift 10 pounds or less but never lift 20 pounds or more. She could stand and/or walk less than two hours in an eight-hour day and she could operate foot/legs controls with both feet/legs. She was normal in examination areas except for arthritis in her knee with tenderness. (Pages 7-8)

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 which has kept her from working any job for a period of 12 months. Claimant is currently working as a lunchroom monitor for the [REDACTED] for 1-1/2 hours per day earning [REDACTED] per day. 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, the DHS-49 has restricted claimant from tasks

associated with occupational functioning based upon claimant's 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 claimant has a severely restrictive physical impairment which has kept her from working for a period of 12 months or more.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. The evidentiary record is insufficient to find that 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 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. On the date of hearing, claimant was working as a lunchroom monitor for the [REDACTED]. Therefore, there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform the work which she currently is engaged in. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly denied claimant's application for disability-based Medical Assistance based upon the fact that claimant is currently working.

Accordingly, the department's decision is AFFIRMED.

/s/  
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Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 17, 2009

Date Mailed: August 17, 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

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