

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: 2009-13781
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2009
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on May 19, 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 August 4, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On December 30, 2008, the Medical Review Team denied claimant's application stating that claimant is capable of performing her prior work.

(3) On January 6, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On January 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 9, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work in sales.

(6) Claimant is a 44-year-old woman whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 240 pounds. Claimant attended the 9th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 1995 in the [REDACTED] as a deli clerk. Claimant has also worked in ticket sales at a theater.

(8) Claimant alleges as disabling impairments: herniated disc and bipolar disorder.

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 and has not worked since 1995. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on physical examination on [REDACTED], claimant was 5' 8" tall and weighed 247 pounds. She was well-developed, well-nourished, cooperative and in no acute distress. She was awake and alert and oriented x3. Claimant was dressed appropriately and answered questions fairly well. Her pulse was 86, her respiratory rate was 16. Her blood pressure was 128/74 and her visual acuity without glasses was 20/25 bilaterally. She was normocephalic/atraumatic. Her eyelids were normal and there was no exophthalmos, icterus, conjunctiva, erythema or exudates noted. Her extraocular movements were intact. In her ears there was no discharge in the external auditory canals. No bulging erythema or perforation of the visible tympanic membrane noted. In her nose there was no septal deformity, epistaxis or rhinorrhea. In her mouth her teeth were in fair repair. Her neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. Her external inspection of the ears and nose revealed no evidence of acute abnormality. In her respiratory system her chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi or wheezes noted. No retractions noted. No accessory muscle use noted; no cyanosis noted. There was no cough. In her cardiovascular there was normal sinus rhythm. S1, S2. No rubs, murmur or gallop. In her gastrointestinal the abdomen was soft, benign and non-distended; non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen were not palpable. In

the skin there were no significant skin rashes or ulcers. In her extremities she had mild tenderness to palpation of the lumbar area. No obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement was noted. In the bones and joints, claimant did not use a cane or aid for walking. She was able to get on and off the table without difficulty. She had a slight limp on the left side. Her stance was normal. Her tandem walk and heel walk were done without difficulty. She stated that she was unable to do toe walk. She was able to squat to 50% of the distance and recover and bend to 60% of the distance and recover. Grip strength was equal bilaterally. Claimant was right-handed. Gross and fine dexterity appeared bilaterally intact. Abduction of the shoulder was 0-150. Flexion of the knees was 0-150 on the right and 0-140 on the left. Straight leg raising while lying was 0-50 and while sitting was 0-90. Neurologically, in general claimant was alert, awake, oriented to person, place and time. Cranial nerve II: Vision as stated in Vital Signs. III, IV and VI: No ptosis or nystagmus. Her pupils were 2 mm bilaterally. No facial numbness and it was symmetrical to stimuli. Symmetrical facial movements noted. She could hear normal conversation and whispered voice. Her swallowing was intact. She had an intact gag reflex. Uvula was midline. Her head and shoulder movement against resistance were equal. There was no sign of tongue atrophy. No deviation with protrusion of tongue. Her sensory functions were intact to sharp and dull gross testing. Her motor exam revealed fair muscle tone without flaccidity, spasticity or paralysis. Cerebellar, finger-to-nose test was done very well. Claimant did have some shortness breath and used her inhaler as needed. The medical report indicated that claimant should be able to occasionally lift 10-15 pounds. She would be able to stand or walk about two to three hours in an eight hour day and she was able to sit about six

hours in an eight hour day. She was able to use her upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and she was able to operate foot and leg controls bilaterally. (Pages 5 and 6)

A radiology examination report of [REDACTED] indicates that claimant had mild and old compression deformity of the superior endplate of L2 and some degenerative boney changes. She had mild posterior bulging of intervertebral disc which could be seen at L2-L3 and L3-L4. At L4-L5 the degenerative boney changes were more severe and there was also more severe but still diffuse bulging of the intervertebral disc. (Page 21)

Claimant's social history indicates that claimant was positive for smoking since the age of 9, one pack a day. Her alcohol history was positive for drinking from age 13 to 42. She was a heavy drinker from age 30 to 41. Drug history was positive for using marijuana, cocaine and crack until 2006 and she had been in rehab three times.

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 no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings indicating that claimant has a severely restrictive impairment or combination of impairments. There was a DHS-49 form in the file which indicates that claimant is deteriorating; however, 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 that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. The medical report in the file indicates that claimant was oriented to time, person and place. Claimant was able to answer all the questions at the hearing and was responsive to the questions.

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 evidence in the record which indicates that claimant has depression or a cognitive dysfunction that is so severe that it would prevent her from working at any job. In addition, based upon claimant's own report, until approximately two years before the hearing, she had heavy use of alcohol as well as crack cocaine which would have contributed to her physical and any alleged mental problems. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental

impairment. 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. According to her past work history at page 18 of the medical reports, claimant has worked as a telemarketer, as a cashier in retail, as a housekeeper in a hotel, and as a baker. Claimant did not leave any of those jobs based upon health reasons. 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 sedentary tasks if demanded of her. Claimant testified that she can walk from her house to the car and that she does use a cane but it is not prescribed by her doctor. Claimant testified that she can stand for five minutes and sit for ten minutes at a time. Claimant testified that she needs help to take a shower and dress herself and that she can't squat but she can bend at the waist but not tie her shoes or touch her toes. Claimant testified that the heaviest weight she can carry is five pounds and that she is right-handed and she has tendonitis in her left hand. Claimant testified that her level of pain on a scale from 1 to 10

without medication is a 10 and with medication is a 7. Claimant testified that she does smoke ten cigarettes per day and her doctor has told her to quit, but she is not in a smoking cessation program.

Claimant is not in compliance with her treatment program if she continues to smoke despite the fact that her doctor has told her to quit.

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).

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that even if claimant did meet the disability standards, she would not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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. Under the Medical-Vocational guidelines, a younger individual (age 44), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

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 and retroactive Medical 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: June 16, 2009

Date Mailed: June 16, 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.

2009-13781/LYL

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:

