

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: 2009-14808
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 14, 2009
Alpena County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 14, 2009.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for Medical Assistance (MA) 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 December 15, 2008, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

(2) January 26, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) No written notice of the denial was issued to claimant.

(4) February 3, 2009, the department received claimant's timely request for hearing.

(5) March 24, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) May 14, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by a bad back, artificial leg, numbness in hands and arms to the elbow bilaterally.

(8) Claimant testified at hearing. Claimant is 45 years old, 5'4" tall, and weighs 152 pounds. Claimant completed the 12th grade and has an associates degree in secretary science/accounting. Claimant is able to read, write and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as an office manager and administrative assistant. Claimant has also worked as a tree cutter, roofer, child care provider, and caterer.

(10) December 11, 2007, claimant presented to hospital after an overdose. She was transferred to another hospital and treated for depression and alcohol dependence. Claimant was discharged on December 14, 2007. Department Exhibit A, pgs 15-56. January 3, 2008, claimant underwent a mental status exam and a report was prepared. The report indicates that claimant was alert and oriented x 3. Hygiene and grooming were good. There was no psychomotor retardation. Claimant appeared somewhat restless and anxious regarding her chronic pain. Speech was clear and coherent. Her thoughts were clear with no evidence of delusions or

hallucinations. Her mood was somewhat depressed. Affect was congruent and appropriate to mood. Claimant denied acts of suicidal ideations, intentions, or plans. Insight and judgment seemed to be fair. Memory and cognition appear to be intact. Axis I diagnosis are major depression, recurrent, without psychosis and alcohol abuse, rule out alcohol dependence. GAF was assessed at 55. Department Exhibit A, pgs 89-90.

(11) December 12, 2007, claimant underwent MRI of the cervical spine and a report was prepared that indicates the C5-6 disc level shows disc disease with circumferential bulge and an eccentric posterolateral to far lateral rightward disc protrusion which cannot be corroborated on the limited sagittal images, doctor suspects it based only on the axial sequences. There is potential for impingement of the right C6 nerve root which should be correlated with the exact clinical presentation and neurological finding. Department Exhibit A, pgs 82-83.

January 4, 2008, claimant underwent a bilateral upper extremity EMG that revealed sensory nerve action potentials of the right and left median nerves to the index fingers and right and left ulnar nerves were normal. SNAPs of the right and left superficial radial nerves were normal. D4 studies were normal. Compound muscle action potentials of the right and left median nerves and right and left ulnar nerves were normal. F wave latencies were normal. Needle examination of the upper extremities and related paraspinals was unremarkable. This included several muscles in the distribution of the C5-T1 myotomes. Final impression is that routine EMG of the upper extremities was unremarkable. There was no evidence for a significant cervical radiculopathy, plexopathy, or mononeuropathy in either upper extremity. Department Exhibit A, pgs 126-128.

January 4, 2008, claimant underwent a physical exam. Treatment notes were prepared that indicate the following: head is normal cephalic and atraumatic; pupils equal, round, and reactive; extraocular muscles are intact; no scleral icterus is present; oral mucosa is pink and moist

without gross lesions; neck is supple without cervical lymphadenopathy or thyromegaly; heart is regular rate and rhythm without murmurs; lungs are clear to auscultation bilaterally; patient has limited range of motion of the neck and including flexion and extension secondary to discomfort; compression tested cervical spine is positive for radiculopathy, greater in the left upper extremity than the right. Deep tendon reflexes are 2/4 in both upper and lower extremities; no focal neurologic deficits notes. Department Exhibit A, pgs 114-116.

(12) January 12, 2009, claimant's physician completed a Medical Examination Report DHS-49 following January 7, 2009 physical examination. Doctor indicates current diagnosis as chronic pain syndrome, depression with situational stress and tobacco and alcohol abuse. Doctor indicates claimant freely ambulatory with normal gait; straight leg raise 40 degrees on left and 45 degrees on right, Hands and wrists have full range of motion, normal pinch or grasp, sensation intact, bilateral knee scars well healed, cranial nerves grossly intact, decreased lordosis in the lumbar spine; memory seems intact. Doctor opines that claimant is able to occasionally carry 20 pounds and operate foot and leg controls with both lower extremities. Per office exam claimant should be able to perform a full range of repetitive actions with both upper extremities. Per patient history, claimant states unable to do these things. Claimant is able to walk, lift, stand and/or walk less than two hours in an eight-hour workday and sit less than six hours in an eight-hour workday. Department Exhibit A, pgs 58-59. October 27, 2008, treatment notes indicate claimant reports continued neck and back pain. Department Exhibit A, pg 62.

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant was treated in December 2007 for suicide attempt and alcohol abuse. She improved with treatment and was released from hospital after four days treatment. On January 3, 2008, claimant was found to be alert and oriented with good hygiene and grooming. Affect was congruent and appropriate to her mood. Claimant denied suicidal ideation, intent, or a plan. Insight and judgment seemed to be fair. Memory and cognition seemed to be intact. GAF was assessed at 55, indicative of moderate symptoms or difficulties. Finding of Fact 10; DSM-IV, 1994.

At Step 2, claimant has degenerative changes in her cervical spine. Objective medical testing has revealed no impairment or limitation due to this condition. Department Exhibit 11-12.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been doing administrative support work. She has also worked as a child care provider, roofer, and tree cutter. See discussion at Step 2 above. Finding of Fact 9-12.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent employment, for a period of 12 months or more, from engaging in a full range of duties required by her past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

Although claimant is disqualified at Step 4, the Administrative Law Judge will proceed through the Step 5 sequential evaluation process, *arguendo*, to determine whether claimant has the residual functional capacity to perform some other less strenuous work than required by claimant's past relevant employment.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a

sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the objective medical evidence of record indicates that claimant has depression. She was admitted to hospital in December 2007. She quickly improved with treatment and in January 2008 was assessed as having moderate symptoms or difficulties. Claimant has degenerative changes in her cervical spine, but no functional deficits or impairments were noted after objective medical examination and testing. Regarding claimant's testimony at hearing that she has an artificial leg; the record does indicate that claimant underwent a knee replacement some years ago. The record does not indicate claimant has any impairments or limitations due to this condition. See discussion at Step 2 above. Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities. Considering claimant's Vocational Profile (younger individual, high school education, and history of semi-skilled work) and relying on Vocational Rule 202.22, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied the application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 24, 2009

Date Mailed: August 25, 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 receipt 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.

JAB/db

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