

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2009-16381
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2009
Oakland County DHS (3)

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 12, 2009. Claimant personally appeared and testified. The record for this hearing closed July 8, 2010.

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 October 28, 2008, claimant filed an application for Medical Assistance, State Disability Assistance alleging disability.
- (2) On December 12, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational rule 202.20.
- (3) On January 6, 2009, the department case worker sent claimant notice that her application was denied.
- (4) On January 20, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On April 6, 2009, the State Hearing Review Team again denied claimant's application stating: that claimant is capable of performing other in the form

of sedentary work per 20 CFR 416.967(a) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 201.27 and commented that the medical opinion is considered in light of CFR 416.927.

- (6) The hearing was held on May 12, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) This Administrative Law Judge left the record open until July 8, 2010, and no new information was submitted by claimant so this Administrative Law Judge closed the record and proceeded to a decision with the information contained in the file.
- (8) On the date of hearing claimant is a 44-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 190 pounds. Claimant has a GED and is able to read and write and does have basic math skills.
- (9) Claimant last worked March 2007 as a custodian. Claimant worked as a custodian for approximately 30 years and was receiving worker's compensation from November 2007.
- (10) Claimant alleges as disabling impairments: degenerative joint disease, chronic obstructive pulmonary disease, disc herniation, depression, pain and arthritis, herpes, and insomnia.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 claimant'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 March 2007. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds 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 or have kept her from working for a period of 12 months or more. Claimant did last work in 2007. Claimant does receive unemployment compensation benefits as of November 2007.

The objective medical evidence on the record indicates that claimant testified on the record that she does have driver's license but is suspended for ticket and that she doesn't drive and her friend or son takes her where she needs to go. Claimant testified that she microwaves her food or her son cooks, and she goes to grocery shops a little at a time, one time per week, and she needs help unloading. Claimant testified that she straightens up a little when she cleans her house and she can walk 10-20 feet at the end of her trailer, stand for 5 minutes, sit for 10 minutes, shower and dress herself but not squat, bend at the waist, or tie her shoes or touch her toes because it hurts her hips and back. Claimant testified that the heaviest weight that she can carry is 2 pounds and her purse usually weighs a pound and a half. Claimant testified that she is right handed and she has arthritis and her left hand gets numb. Claimant testified that her level of pain on a scale from 1-10 without medication is a 10 and with medication is a 5. Claimant testified that she does smoke a pack of cigarettes a day and her doctor has

told her to quit and she is not in a smoking cessation program. Claimant testified that in a typical day she gets up, takes her medication, goes to the bathroom, goes to the living room, and drinks coffee or tea and takes a nap.

A December 1, 2008, mental examination indicates that claimant was a 43 year old white female, moderately obese, appeared her stated age. She came alone by driving a car. Her hygiene and grooming were fair. Her gait was normal. She sat in her chair comfortably and did not show any unusual or bizarre behavior. She did not appear sad or depressed. She was 5'1" tall and weighed 206 pounds. She was in touch with reality. Self-esteem was low. Her psychomotor activity was normal. When asked what she wants to do with her life she said she wants to get better and disability. She has limited insight, her speech was clear, coherent and goal directed. Her thinking process was well organized and easy to follow. She denied any hallucinations, delusions, or paranoid ideations. She denied current suicidal or homicidal ideations. She has been feeling depressed for 2 years, but worse in the past 6 months. She said "BS" when she feels helpless, hopeless or useless. She denied any manic or hypomanic episodes. She denied any obsessions or compulsions or anxiety attacks. She was cooperative through the evaluation. Her affect was appropriate to the thought content and her mood was euthymic. The claimant was alert and oriented x3. She was able to repeat 4 of 4 number forwards and backwards immediately. She was able to recall 3 of 3 objects after 5 minutes. Her date of birth was [REDACTED]. The past president's were Kennedy and Obama. Large cities were Detroit and Lansing. Famous people, she was unable to tell any. Current events, Obama got elected. In calculations: $7+5=12$, $6*5=30$, $100-7=93$, 86, 79, 72. In response to the grass is greener on the other side of the fence, she said "it looks better on the other side. When asked the meaning of don't cry over spilled milk, she said "don't get upset over small things." When asked how a bush and a tree are different or similar, she said "the tree is bigger than the bush, and they both have leaves. If claimant found a stamped addressed envelope, she would give it to the post office. If claimant discovered a fire in a theatre, she would run out. In the future she said she wants to get disability and do something. She was diagnosed with dysthymic disorder, her GAF was 60 and her prognosis was guarded, and she would be able to manage her own funds (pp 4-5).

A December 1, 2008, medical evaluation indicates that claimant was a moderately obese white woman in no acute distress. She was well oriented and not febrile. There is not pallor or jaundice or cyanosis. She had no physical difficulties standing up from her chair or getting on and off the examining table. Her weight was 206 pounds and her height was 5'1". Her head was normocephalic. Extraocular movements were normal. Pupils were equal and reactive to light. There is mild redness in the right eye. Her uncorrected vision is 20/100 and 13/30 on the right and 20/40 and 13/30 on the left eye. Ears, nose and throat were within normal limits. Tongue is normal. Teeth are in fair condition. Neck is well-aligned. There is mild tenderness on the left side of the neck as well as on the left trapezius. There are no carotid bruits, venous distension or thyroid enlargement. Chest: there are no deformities or tenderness. Lungs are clear to percussion. On auscultation, there are minimal rhonchi and wheezing bilaterally. Respiratory rate is 16 per minutes. Heart sounds are of good quality, regular and there

are no murmurs or cardiac enlargement. Blood pressure is 134/82. Heart rate is 88 beats per minute. Abdomen is not distended, soft and non-tender. There are no organomegaly or CBA tenderness. Lumbosacral spine is in good alignment and moderately tender. Forward flexion is 60 degrees, 15 degrees in all other directions. Straight leg raising maneuvers were 60 degrees bilaterally. On the extremities, there are no varicosities, edema, calf tenderness or clubbing of the fingers. Pulses in both feet are normal. On the distal IP joints on both hands, there are minimal deformities with minimal tenderness and subcutaneous nodules, but without restriction. She is able to perform fine and gross manipulation. Grip strength is 21kg on the right and 19kg on the left. She is right handed. On the knee joints, there are no deformities, tenderness, or swelling. She had minimal difficulties squatting. There are not lymphadenopathies. Cranial nerves, speech and coordination are normal. Romberg is negative. Her gait is somewhat guarded. Tendon reflexes are 1+ bilaterally. Pain prick and vibratory sensation are moderately decreased to the left 4th and 5th fingers. There are no tremors, spasticity or muscle atrophy. Thought content and association are normal. Diagnosis was lumbosacral disc disease with history of herniated disc, there is no gross evidence of radiculopathy. Cervical disc disease with minimal left sided radiculopathy. Iritis of the right eye. Mild chronic bronchitis. Under active thyroid. (p. 7)

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. 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 listed in the file. The clinical impression is that claimant is stable. 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, 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 impairment.

Claimant alleges the following disabling mental impairments: depression and anxiety.

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 in the record indicating claimant suffers severe mental limitations. There is no mental residual functional

capacity assessment in the record. There is insufficient 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. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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. There is no 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'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 light or sedentary work.

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

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. BEM, Item 261, p. 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it

determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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.

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

Date Signed: July 20, 2010

Date Mailed: July 21, 2010

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/alc

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