

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: 2009-17586
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 23, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 June 23, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her friend and her mother.

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 January 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 3, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 5, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On February 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 9, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating she was capable of performing other work, namely light unskilled work per 20 CFR 416.968(a) and Vocational Rule 202.20.

(6) Claimant submitted additional medical evidence following the hearing which was forwarded to SHRT for review. On August 13, 2009, SHRT once again determined that the claimant was not disabled as she was capable of performing other work.

(7) Claimant is a 46 year-old woman who is 5'3" tall and weighs 190 pounds after losing 30 pounds in 2 months due to medication side effects. Claimant completed 12th grade and can do basic math, but has a difficult time comprehending reading material and also cannot spell very well.

(8) Claimant states that she last worked in July, 2007 for [REDACTED] as a team leader, job she held for 3 years until she had surgery on her knee. Claimant was on partial disability, then told her job was no longer available. Claimant has worked in various positions at [REDACTED] since year 2000. Claimant also had a day care center in her home from 1992 to 2000. Claimant receives UCB and is currently on an extension still receiving such benefits.

(9) Claimant alleges as disabling impairments: bipolar disorder, reflex sympathetic dystrophy (RSD), knee/foot pain, and schizophrenia.

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).

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).

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 does 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 testified that she has not worked since July, 2007. Claimant is not disqualified from receiving disability at Step 1. It is noted that the claimant is receiving UCB, benefits she would not be eligible for if she claimed she was disabled and not available for work.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or

combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a Medical Examination Report for an exam of [REDACTED], completed by a psychiatrist. Claimant’s chief complaints include depressed mood, poor concentration, poor memory, insomnia, and auditory hallucinations. Claimant’s diagnosis is schizoaffective disorder. Claimant is not expected to return to work. Claimant has mental limitations in areas of comprehension, memory, sustained concentration, and social interaction. Claimant can meet her needs in the home.

Neuropsychological Assessment Report for dates of service of [REDACTED] and [REDACTED], states that claimant was referred for the assessment of her current cognitive and psychological functioning, as she is struggling with memory and occasional confusion. Claimant has pain in her lower left leg and in her back and a diagnosis of complex regional pain syndrome. An MRI of the brain was performed on [REDACTED] and showed no abnormalities. An EEG was also performed on [REDACTED] and the results were reported to be normal. MRI of April, 2007 and [REDACTED] both showed an enlarged pituitary gland.

Claimant reported driving but that she will become easily mesmerized by something, and that she spends her days at her friend’s house, playing cards and gambling, which she admitted is problematic. Claimant stated she does not feel depressed, but does not want to be around people, and denied thoughts of hurting self or others. Claimant was pleasant and cooperative throughout the assessment, and no involuntary movements or hallucinations were noted. Summary and conclusion of the tests administered to the claimant is that she is estimated to be functioning in

the low average range of intellectual efficiency, with similar verbal and performance abilities. Both her verbal and visual memory abilities are intact, as well as her visuospatial/constructional skills. Claimant's language functions are variable, her attention abilities are intact, but her executive functions are varied and reflect slowed processing speeds, likely related to her current level of depression. Claimant has a cognitive disorder.

Claimant's record contains Progress Notes from her psychiatrist that cannot be deciphered due to the handwriting, and therefore cannot be used in this decision.

Medical Examination Report of December, 2008 from a pain management specialist indicates that claimant's current diagnosis is complex regional pain syndrome, and chief complaint is left lower extremity pain. [REDACTED], report from Pain Management Center where the claimant has been treated for left lower extremity pain for a number of months states that the claimant had been getting fairly good relief with a series of lumbar sympathetic nerve blocks. Unfortunately, claimant was involved in a motor vehicle accident where she lost control of her car on the ice and snow and went into a ditch, the car flipped and she was in the car for 45 minutes before she could be cut out and taken to the emergency room. X-rays and scans of claimant's entire body did not show any fractures but certainly would be enough to intensify her pain. Remarkably claimant's left leg is not flared to any greater degree. A repeat lumbar sympathetic nerve block was administered.

[REDACTED], Physical Therapy Evaluation indicates as date of initial evaluation [REDACTED], at which time claimant's complaint was that of the pain down the center of her spine. Assessment is that the claimant demonstrates having improved thoracolumbar range of motion and does report having increased tolerance of walking. Claimant is to continue with her independent home exercise program and she should do well.

New information provided by the claimant following the hearing includes more Progress Notes from claimant's psychiatrist that cannot be deciphered due to puzzling handwriting. Notes are from December, 2008 to June, 2009. Claimant also provided Neuropsychological Assessment Report from April and May, 2008 that had already been provided previously, psychologist's letter from [REDACTED], MRI and EKG reports from 2007 already cited in this hearing decision as they were contained within other medical reports, and May, 2007 regarding her neurological symptoms which at that time included falling asleep at various times during the day. Claimant also provided [REDACTED], letter from her psychiatrist saying he does not see her returning to full time employment anytime within the next 8 weeks.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant did injure her knee but physical therapy report of December, 2008 indicates she is improving. MRI and EKG of two years ago do not show any abnormalities except that her pituitary gland is enlarged, but no medical report to indicate that this is a serious medical issue for the claimant has been provided. Claimant had an evaluation for complaint of falling asleep during the day frequently in 2007, condition she testified to at the time of the hearing. However, there are no medical reports to indicate that this condition is caused by some type of illness and/or abnormality. 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 that claimant suffers severe mental limitations. Progress Notes from claimant's psychiatrist cannot be read due to his handwriting. The evidentiary record is insufficient to find 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 trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was working at [REDACTED] stores for 7 years in various positions. Claimant injured her knee and had to have surgery on it, and has been off work since July, 2007, but claims she is able and available to work, as she is receiving UCB. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability 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 other 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).

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).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least sedentary and light work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 46), with limited education and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

Testimony of claimant's friend is that the claimant is not the same person she grew up with, she forgets things and must strain to connect her thoughts, and that she falls asleep all the time suddenly and cannot be awoken. This Administrative Law Judge asked how the claimant drives when she falls asleep without any notice, and the response was that she is now taking fewer medications so her falling asleep is better. It is also noted that the claimant testified that she plays cards couple of hours per day with a friend, and watches criminal, legal and detective shows. These activities would seem to require certain degree of alertness and ability to concentrate and comprehend. Claimant's mother testified that the claimant does fall asleep easily but that she is not as bad as before. The testimonies of claimant's friend and of her mother were certainly considered, however medical information presented does not support the extent of disability described in such testimonies.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of

impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 sedentary and light work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 5, 2009

Date Mailed: November 6, 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.

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