

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: 2009-1861

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 24, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on February 24, 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 June 5, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On September 5, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 23, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 1, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 10, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the treating physician has opined that claimant is totally disabled for a lifetime; however, the records and information she supplied do not support this. Clearly the combined effects of her impairments indicate she is limited. However, the medical evidence in the file does not demonstrate a medically determinable impairment that meets/equals a listing or would be expected to prevent the claimant from being capable of some level of work. There was some question of chest pain at the consultative exam; however, it was somewhat atypical in that she described that it occurred daily and the duration was 15 to 20 minutes. She takes Tylenol for it. In addition, her family physician made note of chest pain but made no note that it was cardiac related. The claimant should be capable of performing unskilled light work with alternative sitting and standing as afforded by normal breaks and lunch. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled light work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a history of unskilled work, MA-P is denied using

Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on February 24, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on February 26, 2009.

(8) On March 18, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.20. The medical opinion was considered in light of CFR 416.927.

(9) Claimant is a 46-year-old woman whose birth date is [REDACTED] Claimant is 5' 9" tall and weighs 230 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked April 25, 2008 for the [REDACTED] as a locker room attendant and cafeteria aide. Claimant also worked in a laundry mat, as a wrapper in a deli, and as a waitress in a bar.

(11) Claimant alleges as disabling impairments: hypertension, leg and feet swelling, arthritis, dyslipidemia, anxiety, depression, high cholesterol and muscle spasms.

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 April 25, 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report in [REDACTED] from the treating physician noted that claimant was 5' 9" tall and weighed 238 pounds. Her blood pressure was 150/100. She was noted to have 1+ leg edema with tenderness in the legs and feet and left knee with slight swelling. She had diagnosis of arthritis, hypertension, leg edema and dyslipidemia. (Page 8)

Consultative examination of [REDACTED] reported the claimant's blood pressure to be elevated. She had difficulty breathing. Her gait was normal and there were no sensory motor deficits. There was ankle edema and lower extremity pitting edema. She complained of chest pain that by description had some elements of angina; however, overall was not typical of angina. A letter from her treating physician dated [REDACTED] reported the findings of an exam of [REDACTED]. She was noted to weigh 244 pounds. Heart sounds were normal. Lungs were clear. There was 1+ pitting edema as well as tenderness in the lower extremities. Reflexes and pulses were normal. Motor strength was slightly weak. The physician opined that claimant was totally disabled and unable to work for a lifetime. (Page 4)

The claimant reported she was depressed; however, she has never been treated by a mental health professional. Psychiatric consultative examination of [REDACTED] reported the

claimant to be depressed over financial problems. She was given a diagnosis of adjustment disorder with depressed mood. GAF was estimated at 65. On her physical examination on [REDACTED] her blood pressure was 140/100 and repeated at 140/95. Her temperature was 98 degrees Fahrenheit and pulse was 76 per minute. Her respiration was 24 per minute and regular. There were no sensory or motor deficits in the lower extremities. She could tie her shoes and button her clothes and she was right hand dominant. She could pinch and grip strength at 5/5 bilaterally. She had no sensory or motor deficits in the upper extremities. She was fully alert and well oriented x3. Her speech was normal. Her hearing was normal. Her neurological cranial 2 through 12 were intact. No facial asymmetry was noted. Her skin was normal with no rashes. Her head was within normal limits. Her neck had no cervical adenopathy. There was no jugular vein engorgement. No thyroid enlargement. Her ears were within normal limits. Her nose and throat had nothing abnormal defected. She had regular breath sounds and no adventitious sounds in the lungs. She was not using her upper accessory muscles for respiration. Her chest wall expansion was within normal limits. There was no evidence of congestive heart failure except for the swelling of her legs. Cervical spine range of motion was within normal limits. Lumbar spine flexion was 0 to 90 degrees, extension was 0 to 20 degrees and right/left lateral flexion was 0 to 20 degrees. Straight leg raising test was 0 to 60 degrees bilaterally. Shoulders, hips, elbows, knees, ankles, wrists and hands were within normal limits as to range of motion.

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 are 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 her chest; however, there are no corresponding clinical findings that support the reports

of symptoms and limitations made by the claimant. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition or a total permanent disability. In short, the claimant's physician has restricted claimant from tasks associated with occupational functioning based on the 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 insufficient objective medical/psychiatric 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. Claimant was oriented to time, person and place during the hearing and was able to answer all the questions and was responsive to the questions. 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 and also because she last worked April 25, 2008 and would not have eligibility based upon the fact that her impairments do not meet duration.

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.

Claimant's past relevant work was light work. As a locker room attendant and cafeteria aide as well as a sandwich wrapper and waitress, claimant was required to be on her feet extensively.

There is insufficient objective medical evidence in the record that claimant cannot do prolonged standing or walking with appropriate breaks and lunch. Therefore, this Administrative Law Judge finds that claimant is disqualified from receiving disability at Step 4 also.

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 testified on the record that she does not drive because she has never had a driver's license and her husband takes her where she wants to go. Claimant testified that she lives with her husband in a house and has no children under 18. Claimant testified that she cooks everyday and cooks things like spaghetti, meatloaf and mostaccoli. Claimant testified that she grocery shops every other month without help. Claimant testified that she does clean her home by vacuuming, mopping, sweeping, doing dishes and laundry. Claimant testified that she can walk a half a block, stand for less than five minutes and sit for ten to fifteen minutes at a time. Claimant is able to sometimes able to engage in sexual relations. Claimant testified that the heaviest weight she can carry is eight pounds or a gallon of milk and that she is right handed and that her hands and arms are fine. Claimant is able to shower and dress herself, squat but not easily, bend at the waist even though it hurts, tie her shoes and touch her toes. 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 in a typical day she gets up and eats breakfast, sits on the couch, cleans the house, sits and talks to her husband, watches television six to seven hours a day. Claimant testified she couldn't do a sit down job because her legs hurt.

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.

Claimant testified on the record that she does have depression and anxiety because she wants to work but can't.

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 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 based upon a physical or mental impairment. 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 46), with a 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: April 7, 2009

Date Mailed: April 7, 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.

2009-1861/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:

