

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: 2009-19141

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 16, 2009

Oakland 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 June 16, 2009. Claimant personally appeared and testified. Claimant's mother also appeared and testified at the hearing.

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 September 9, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the months of June through August 2008, alleging disability.

(2) On October 31, 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 November 5, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On February 19, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 27, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was admitted in [REDACTED] due to bilateral pulmonary embolism. Her recent exam was unremarkable except for her weight. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied.

(6) Claimant is a 22-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 270 pounds. Claimant recently gained 15 pounds. Claimant has attended three years of college and she attends college at [REDACTED] four days a week for four hours on Tuesday and Thursday and two hours on Monday and Wednesday.

(7) Claimant receives the Adult Medical Program.

(8) Claimant alleges as disabling impairments: Polycystic ovarian syndrome, pulmonary embolism, weight gain, and mood swings.

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 never worked at a job. Therefore she is not precluded from receiving disability benefits on this basis.

The objective medical evidence on the record indicates that claimant was admitted in [REDACTED] due to bilateral pulmonary embolism. (New Information from DDS) A FIA-49 form dated [REDACTED] showed that claimant had a history of pulmonary embolism and polycystic ovarian syndrome. The claimant was 270 pounds (Page 12) No limitations were indicated. (Page 13) An examination date of [REDACTED] showed the claimant was 5' 6" tall and 280 pounds. Her blood pressure was 127/81. Her exam was otherwise unremarkable. (New Information from DDS) The claimant underwent a mental status examination in [REDACTED] [REDACTED] which revealed no evidence of severe depression or any other serious psychiatric disorder. There was no psychiatric diagnosis. (New Information from DDS)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment which has lasted or are expected to last the durational requirement of 12 months or more. There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. A [REDACTED] medical report indicates that claimant was alert, awake, and morbidly obese and in no acute distress. Her head was atraumatic and normocephalic. Pupils were round and reactive to light. The throat was clear. Claimant had excess hair on her face. Her neck was supple with no

adenopathy and no thyroid enlargement. Her lungs were clear to auscultation and she had good air exchange bilaterally. The heart had a regular rate and rhythm. S1 and S2 were within normal limits. There was no murmur or gallop. The abdomen was soft and benign with positive bowel sounds. No rebound tenderness. There was no edema or cyanosis. Good peripheral pulses noted. The claimant was oriented x3. She had normal muscle strength. No deficit was noted. The claimant was able to get on and off of the table and was able to squat and bend without any difficulties. (Page 2 of the [REDACTED] medical report) A psychological examination indicates that claimant's affect was mildly anxious. She was neat, clean, and was casually groomed. She wore eyeglasses. She wore a casual black jacket. She was anxious. She was polite and cooperative. She was in good contact with reality. She spoke in a normal tone of voice with a moderate amount of spontaneity and productivity. Her conversation was coherent and relevant. She said she felt a little depressed and a little bored. She had felt tired physically. She denied any history of hallucinations or delusions. She denied any current suicidal or homicidal intentions. She was able to remember all three objects given to her three minutes later. She was able to repeat seven numbers forward and five numbers backward. For the names of past presidents she said the current president is Obama, before him was Bush, before him was Clinton. She stated her date of birth was June 3, 1987, which was the correct answer. When asked to do serial 7's from 100, she said easily and accurately 93, 86, 79, 72, 65, 58, 51, 44, 37, 30, 23, 16, 9, and 2. For five large cities she said Detroit, Chicago, Atlanta, Los Angeles, and Las Vegas. For the meaning of the proverb "the grass is greener on the other side of the fence", she said people are more optimistic when they say this statement. For the meaning of the proverb "don't cry over spilled milk" she said if something went wrong don't overreact. When asked how a tree or a bush were alike she said they are both plants and they are green. When asked how they were different

she said a tree is taller. When asked what she would do if she found a stamped, addressed envelope she said I would return it to the correct address and when asked what she would do if she discovered a fire in a theater she said I would call for help and call 911. Claimant had no psychiatric diagnosis. 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. Claimant testified that she has no limits on her ability to walk or stand and she can sit for two hours at a time. Claimant is able to squat, bend at the waist, shower, tie her shoes and touch her toes and she can carry 20 pounds at a time. Claimant is left-handed and her hands and arms and legs and feet are fine. Claimant testified that her level of pain on a scale from 1 to 10 with medication is a 1 and with medication is a 0. Claimant testified that in a typical day she gets up at 7:30 a.m., gets dressed, eats, does her chores, does her homework, then studies, plays on the computer, reads, watches television, and then goes to bed. Claimant testified that she has no medications and that she does cook everyday and cooks things like chicken, spaghetti, and fish. Claimant testified that she does clean her home by vacuuming, sweeping, mopping, dusting, doing laundry, and doing dishes.

There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or 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 do some work. Claimant does currently attend colleges classes even though she has never had a job, however, there is no medical evidence in the file with indicates that claimant cannot continue to attend college courses or do work on a computer. 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/school.

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).

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 school/employment or that she is physically unable to do medium, 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. The claimant's testimony as to her limitations indicates that she should be able to perform at least light or sedentary work. There is no objective medical evidence continued in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant's complaints of pain, are very minimal, and are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform 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 at least light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 22), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled. Claimant is disqualified from receiving disability pursuant to Medical-Vocational Rule 202.20.

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 medium, 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: August 3, 2009

Date Mailed: August 3, 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.

LYL/vmc

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