

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: 2009-20954
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 16, 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 July 16, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her sister [REDACTED]

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 May 29, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 20, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On February 26, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On March 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 15, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant retains the capacity to perform a wide range of simple, unskilled, light work using Vocational Rule 202.20 as a guide.

(6) Claimant submitted additional medical information following the hearing that was sent to SHRT for review. On September 1, 2009, SHRT once again determined that the claimant can perform light work and is not disabled.

(7) Claimant is a 48 year-old woman who is 4'10" tall and weighs 115 pounds. Claimant completed 12th grade and 2 years of college in business management and marketing. Claimant can read, write and do basic math.

(8) Claimant states that she last worked in November, 2007 as a manager of a sub shop, job that lasted 2 years and that she quit due to back pain. Claimant has also worked in a hotel as a waitress for 4 ½ years up to 2005, job she also quit due to back pain. Claimant was a photographer for 13 years in the 1990's.

(9) Claimant alleges as disabling impairments: aortic aneurysm, aortic dissection, heart problems, high blood pressure, back problems, muscle giving out in arms that prevent her from lifting, sinus surgery, depression, tiring easily, and swelling of the legs.

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 November, 2007. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she 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 Discharge Documentation for date of hospital admission of [REDACTED] and discharge on [REDACTED]. Admission diagnoses for the claimant is hypertension, hypercholesterolemia, tobacco abuse, depression, ethyl alcohol abuse, and history of cocaine abuse. Discharge diagnoses are the same with addition of acute type A ascending aortic dissection and severe aortic insufficiency. Claimant was admitted to the heart center emergently from another hospital on [REDACTED], and it was discovered she had an acute semi-aortic dissection. Replacement of the ascending aorta was performed. Claimant was in normal sinus rhythm at the time of discharge. Claimant was instructed to follow activity guidelines per cardiac rehab's home exercise program, she was not to lift over 10 pounds for 2 months, and she was not to drive until she sees her surgeon in follow-up.

Claimant was seen by a surgeon on [REDACTED], for a follow-up appointment after acute Type A aortic dissection and repair. It is noted that the claimant is an unusual case who did extremely well following surgery and returned home within a week. Claimant continues to do very well at home and offers no complaints except for difficulty with her financial matters. Claimant was doing well on the day of the exam; she had a normal physical exam and a clear chest x-ray. It was explained to the claimant that approximately 80% of the people in her condition do not have progression.

On [REDACTED], claimant came to the emergency department with a complaint of chest pain that had lasted continuously over the last 4 days. An echocardiogram was performed which

showed normal left ventricular systolic function with normal wall motion. A CT angio of the thorax showed what appeared to be a small pseudoaneurysm. The doctor however opined that there was no pseudoaneurysm and the pain was mostly pleuritic in nature. Claimant was discharged on the same day with discharge diagnosis of chest pain, unclear etiology, and viral illness.

Psychological examination report of [REDACTED], arranged by Disability Determination Service indicates that the claimant reports a history of not-well-controlled high blood pressure. Claimant continues to have fluctuating blood pressure and her pulse races frequently, and she reports having pain every day and that she is tired much of the time and easily fatigued and worn out. Claimant also suffers anxiety because she is not working and has to sit at home. Claimant was psychiatrically hospitalized in 2005 at [REDACTED] for depression and a suicide attempt. Claimant denied any history of substance abuse treatment or physical therapy.

Claimant appears reality-based and oriented and seems to have adequate self-esteem. Claimant's thought processes were logical and organized, and her speech was clear and understandable. Her memory and concentration were good. Claimant did not evidence any signs of psychosis, she has some anxiety but it seems to be not unexpected and worries about her future, her financial concerns, etc. Claimant was oriented to person, place and time. Claimant's diagnosis was that of mood disorder due to heart condition and back pain with mixed anxiety and depression-moderate, with a GAF of 48. Claimant's prognosis was fair depending on the degree of improvement in her physical condition.

[REDACTED] report from a cardiologist indicates that the exam was normal, claimant's heart is regular, there is no murmur, her extremities are not edematous, and her pulse exam is normal. Claimant has developed a very small pseudo-aneurysm formation at the

proximal aortic suture line at two separate anterior and rightward locations on the aorta, since her May, 2008 surgery. It was recommended that the claimant have a repeat scan in six months' time due to presence of the pseudo-aneurysms and the fact that they have changed since the last evaluation.

██████████, MRI of claimant's thoracic spine was normal. MRI of claimant's lumbar spine of the same date showed degenerative changes. MRI of claimant's cervical spine of ██████████ showed moderate degenerative joint and disc disease most prominent at C3-C4 and C4-C5 that has mildly progressed at C4-C5 level compared with prior examination. No significant central canal or neural foraminal stenosis was found. MR of claimant's head of ██████████, for complaint of headaches showed no intracranial abnormality and sinus inflammatory disease. ██████████, x-ray of claimant's left knee due to pain complaint showed unremarkable appearance.

██████████, medical report from a neurosurgeon indicates that the claimant is being seen after an absence of quite some time. Claimant was seen last about two years ago and since then, she has missed several follow-up appointments. Claimant continues to complain of pain in her low back that occurs mostly when she is standing and walking, but is generally relieved when she sits down. Claimant also continues to complain of pain in her neck that causes her headaches. Examination of claimant's lumbar spine reveals mild to moderate paraspinal spasm with some restriction of mobility. Straight leg raising and foraminal compression tests are negative bilaterally, and no gross focal motor or radicular deficits can be detected. Examination of the cervical spine reveals moderate paraspinal spasm as well. Impression is that of cervical spondylosis with early radiculopathy, headaches, and lumbar spondylosis with early radiculopathy. The neurologist opined that the claimant is a very poor candidate for any type of

surgery. Claimant was advised as far as her work status that she is to take it easy and avoid all activities that aggravate her symptoms. In particular, she should avoid repetitive bending and twisting of her neck and low back, refrain from prolonged flexed posture of her cervical spine, and if sitting at a computer or television, the terminal should be at her eye level. Claimant should refrain from prolonged sitting, standing, walking, stooping, or driving for more than ½ an hour at a time. After each such period of activity, claimant should either change her pace or, better yet, take a few minutes' break if at all possible. Claimant should also not lift more than 20 pounds at a time.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. The Administrative Law Judge finds that claimant has met her burden of proof at Step 2.

The analysis proceeds 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, the Administrative Law Judge finds that the claimant would probably have a difficult time performing her past relevant work. Claimant's past relevant work was as a manager of a sub shop, job that would require prolonged standing, etc., and as a waitress, job that would also require prolonged standing, walking and carrying of items. Neurosurgeon's July, 2009 report prepared in a very thorough manner indicates that the claimant has medical issues that

would most likely prevent her from performing her past work. Finding that the claimant is unable to perform work which she has engaged in in the past can therefore be reached and the claimant is not 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).

Medical evidence presented, even when given great weight, does not lead to the conclusion that the claimant is not capable of doing sedentary 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 he cannot perform at least sedentary work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 48 years of age), with limited education and an unskilled or no work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

In conclusion, although the claimant has 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 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: December 1, 2009

Date Mailed: December 11, 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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