

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: 2009-21171
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 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 July 1, 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) 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 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On February 19, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

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

(4) On March 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 19, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's blood pressure is fairly controlled. There is no evidence of end organ damage. The claimant is depressed but her thoughts are goal-directed, coherent, and logical. The claimant would be capable of simple, unskilled work. 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 simple, unskilled work. The claimant's previous jobs were skilled and semi-skilled and she would be unable to return to her past work. Therefore, based on the claimant's vocational profile of closely approaching advanced age at 51, an associate's degree and a history of semi-skilled and skilled work, MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on July 1, 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 July 13, 2009.

(8) On July 17, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: The newly submitted evidence

does not significantly or materially alter the previous recommended decision. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence does not significantly or materially alter the previous recommended decision.

Therefore, based on the claimant's vocational profile of closely approaching advanced age, 14 years of education and a history of semi-skilled/skilled work, MA-P is denied using Vocational Rule 203.23 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(9) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 240 pounds. Claimant has an associate's degree and is able to read and write and does have basic math skills.

(10) Claimant last worked March 2008 as an administrative assistant. Claimant has also worked at the community center as an office manager and as a payroll officer and a membership coordinator for the [REDACTED]

(11) Claimant alleges as disabling impairments: hypertension, anxiety, depression, and crying spells.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 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 March 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant was admitted in [REDACTED] due to major depression with psychosis. (Page 37) At the time of discharge she was doing well and was no longer feeling depressed. (Page 39) In [REDACTED] the claimant reported feeling depressed since she lost her job and house about 6-7 months earlier. (Page 12) Her mental status revealed fair eye contact. She was tearful during the interview. Her speech was clear, normal in range and volume. Her mood was depressed and affect was blunted. There were no delusions or hallucinations noted or present. Thought processes were goal-directed, coherent, and logical. Diagnosis included major depressive disorder, rule out schizoid personality disorder. (Page 14) A DHS-49 form dated [REDACTED] showed the claimant's blood pressure was fairly controlled at 134/86. (Page 8)

The psychiatrist's progress note in [REDACTED] reported the claimant was doing well. Her mood was euthymic and she had full range of affect. Her thought process was goal-directed. She was oriented x3. Her blood pressure was slightly elevated with no end organ damage. (Page A)

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 testified that she has pain all over and her pain is a 5 on a scale from 1 to 10 whether or not she takes medication. Claimant testified that she has no limits on her ability to walk, stand, sit, and that she can shower and dress herself, bend at the waist, tie her shoes, and touch her toes and that she can carry 20 pounds. Claimant is left-handed and she stated that she does have some tremors in her left side and that her legs and feet are fine. Claimant testified that she does smoke five cigarettes per day and she continues to smoke despite the fact that her doctor told her to quit and she is not in a smoking cessation program. Claimant testified that she quit smoking marijuana a few years ago. This Administrative Law Judge finds that claimant does not have any physical limitations. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. There is insufficient evidence in the record 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. Claimant does have some problems with sustained concentration according to her treating physician. A psychiatry examination in the file indicates that claimant appeared at the mental status examination well-dressed and groomed. She appeared her stated age. She looked a little

overweight. She was cooperative and had fair eye contact. She did not have any psychomotor agitation or retardation. She was tearful during the interview. Her speech was clear, normal in range and volume. Her mood was depressed, affect was blunted. No delusions or hallucinations were noted or present. Thought processes were goal-directed, coherent, and logical. She was alert, awake, and oriented to person, place, time, and self. She had impaired recent and immediate memory. She had a fair fund of knowledge. She had good abstract thinking. She appeared to have fair insight and judgment. (Page 14) The Mental Residual Functional Capacity Assessment indicates that claimant was moderately limited in many areas and only markedly limited in the ability to travel to unfamiliar places and use public transportation. (Page 16-17)

For these reasons, this Administrative Law Judge finds that the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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. Claimant's impairments are non-severe and 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 sedentary work. Claimant does not have any physical limitations and she 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.

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 which indicates that claimant's depression or cognitive disorder would cause her to be so limited that she would have restrictions of activities of daily living, social functioning, concentration, persistence, or pace, or the ability to tolerate increased mental demands associated with competitive work. This Administrative Law Judge finds that claimant could probably perform any of her prior work as an administrative assistant or office manager even with her impairments. 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/psychiatric 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 at least light or sedentary work 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 at least 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 during the hearing. 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. Based on the claimant's vocational profile of closely approaching advanced age at 51, associate's degree and history of semi-skilled and skilled work, MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied.

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 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: September 14, 2009

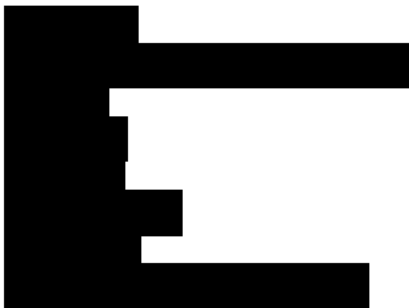
Date Mailed: September 14, 2009

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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