

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: 2009-21278
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 2009
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, a telephone hearing was held on August 19, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether claimant has established disability for Medical Assistance (MA) 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) December 15, 2008, claimant applied for MA, retroactive MA and SDA.
- (2) February 27, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) March 6, 2009, the department sent claimant written notice that the application was denied.

(4) March 20, 2009, the department received claimant's timely request for hearing.

(5) May 19, 2009 and July 9, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) August 19, 2009, the telephone hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. October 8, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 10-8-09.

(7) Claimant asserts disability based on impairments caused by fibromyalgia, depression, anxiety, GERD, anemia, heart disease, lung disease and eczema.

(8) Claimant testified at hearing. Claimant is 51 years old, 5'2" tall, and weighs 147 pounds. Claimant completed high school, beauty school, and is a certified nurse assistant. Claimant is able to read, write, and perform basic math. Claimant has a driver's license but does not drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a certified nurse aide and airport screener.

(10) April 22, 2009, claimant underwent an independent physical examination and a report was prepared that indicates in pertinent part: Neck is supple without masses. Chest has dullness to percussion in the right lower lobe with diminished air area in this area. Breath sounds are otherwise clear. There is no accessory muscle use. Heart has regular rate and rhythm without enlargement. There is normal S1 and S2. Abdomen has no organomegaly or masses. Bowel sounds are normal. No clubbing, cyanosis, or edema is detected. Peripheral pulses are

intact. There is no evidence of joint laxity, crepitation, or effusion. Grip strength remains intact. Dexterity is unimpaired. Patient could pick-up a coin, button clothing, and open a door. Patient had no difficulty getting on and off exam table, no difficulty heel-to-toe walking, mild difficulty squatting, and mild difficulty hopping. Range of motion in all joints tested was within normal limits. Cranial nerves were intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes are intact and symmetrical. Romberg testing is negative. Patient walks with normal gait without the use of an assistive device. Doctors conclusions are that patient appeared short of breath and did have findings of diminished air entry to the right side. She does complain of associated fibromyalgia but did appear to have a depressed affect today. There were no findings of significant orthopedic disease. Much of her symptoms appear to be related to her current pulmonary symptoms. Chest x-ray revealed bony thorax and soft tissues are intact. Heart is about the upper limit of normal in size. The CT ratio is 13.5/27 cm. The left ventricle does not approach the thoracic spine on the lateral view. There is minimal interstitial scarring at the left lung base. No active intrapulmonary process is observed. Department Exhibit A, pgs. 238-243.

(11) February 23, 2009, claimant's physician completed a Medical Examination Report (DHS-49) following physical examination that took place May 21, 2008. Physician indicates diagnoses of connective tissue disorder of unknown type, anemia, fibromyalgia, and anxiety/depression. Physical exam was within normal limits with the exception of fatigue, fatigue with activity, history of chest pain, generalized weakness, and some pain with reduced range of motion in all joints, pain at trigger points, flat affect. Doctor opines that claimant's condition is stable. Doctor indicates claimant is occasionally able to lift less than 10 pounds and is able to stand/or walk less than 2 hours in an 8 hour workday. Claimant is capable of

performing a full range of repetitive actions with both upper extremities and both lower extremities. Doctor indicates the reason for limitations are generalized weakness and likelihood of deterioration at some time. Department Exhibit A, pgs. 223-224.

(12) December 4, 2008, claimant was admitted to hospital complaining of chest pain. Claimant was examined and underwent objective medical testing that revealed a small paricardial and small left-sided pleural effusion with some mild left basilar atelectasis. There was a prominent banded like area of opacity that extended into the right lower lobe and the suggestion was that it could represent chronic scarring and atelectasis, although pneumonia was not excluded. All other medical testing was negative. Discharge diagnoses were atypical chest pain, fibromyalgia, anxiety, depression, right lower lung scarring and left-sided plural effusion. Claimant was discharged on December 5, 2008. Department Exhibit A, pgs. 219-220; 201-208. July 15, 2009, claimant's internist wrote a letter at the request of claimant's attorney that indicates she underwent a CT scan on March 2, 2009 that showed persistent change in the right lower lobe and the radiologist felt this represented an intralobar pulmonary sequestration. Doctor's opinion is that intralobar sequestration and mild restrictive lung disease would not result in pulmonary disability. Claimant Exhibit A, pg. 4.

(13) August 17, 2008, claimant's rheumatologist wrote a letter at the request of claimant's attorney. In pertinent part, the letter indicates that claimant had tenderness over the trapezius and infraspinatus muscles as well as pectoral and sternalis. There was bilateral gluteal sacroiliac, and lower lumbar and spine as well as bilateral trochanteric iliotibial band, medial distal thigh, medial proximal and distal leg soft tissues with a "touch me not" sign. Heart and lung exam was normal. There was no dependent edema or evidence of synovitis. Doctor concludes claimant has clinical picture for fibromyalgia. There was concern for a connective

tissue disease but progress lab work from February 9, 2009 included a negative ANA and normal CBC. Claimant Exhibit A, pgs. 6-7.

(14) April 7, 2009, claimant underwent an independent psychiatric evaluation and a narrative report was prepared. The report indicates AXIS I diagnosis of adjustment disorder with depressed mood. GAF was assessed at 55. Claimant appeared to be in contact with reality. Insight and judgment were intact. Mental activity was spontaneous. Speech was organized. Patient denied presence of any auditory or visual hallucinations, delusions, persecutions, obsessions, or unusual powers. She admitted to feelings of worthlessness. She denied suicidal ideation. Claimant's emotional reaction was depressed as she had a flat affect and spoke in a monotone. Immediate and past memory was intact. General fund of information was intact. Abstract thinking was within normal limits. Department Exhibit A, pgs. 245-249.

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has fibromyalgia; connective tissue disorder has been ruled-out. Claimant has interlobar sequestration and mild restrictive lung disease. At physical exam in April 2009, claimant was short of breath. The objective medical evidence of record establishes that claimant has adjustment disorder with depressed mood. Her GAF is assessed at 55 indicative of moderate symptoms or difficulties. The record contains no objective medical evidence to establish that claimant has severe impairments or limitations due to any of these conditions or combination of any of these conditions. Finding of Fact 10-14; Department A; Claimant A; DSM IV 1994 R.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a certified nurse assistant and airport screener. See discussion at Step 2 above. Finding of Fact 9-14.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more,

from engaging in a full range of duties required by claimant's past relevant employment.

Therefore, claimant is disqualified from receiving disability at Step 4.

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).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-14.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities. Considering claimant's Vocational Profile (closely approaching advanced age, high school graduate or more, and history of skilled or semi-skilled work-skills not transferable) and relying on Vocational Rule 202.14, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively

participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2 through 5 above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied the application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/S/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 16, 2010

Date Mailed: August 17, 2010

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.

JB/sd

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.