

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: 2009-22620
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 9, 2009
Gladwin 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 9, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her husband [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 December 16, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 17, 2009, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.

(3) On February 19, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On March 5, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 8, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that she was capable of performing other work, namely medium unskilled work per Vocational Rule 203.28.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On August 24, 2009, SHRT once again determined claimant was not disabled, for the same reasons stated in their June 8, 2009 decision.

(7) Claimant is a 48 year-old woman whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 262 pounds. Claimant completed high school and can read, write and do basic math.

(8) Claimant states that she last worked in April, 2001 as a waitress in a restaurant, job that lasted her 1 year and ended when the restaurant went out of business. Claimant has been on Family Independence Program cash assistance until 2008, until her last child turned 18 years of age. Claimant currently has no income and lives in a camper on her nephew's property with her husband.

(9) Claimant alleges as disabling impairments: back pain, fibromyalgia, joint pain, anxiety, depression and arthritis in clavicle.

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 year 2001. 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 [REDACTED], x-rays of claimant's right and left ankles and of both knees. X-rays show as negative of any medical issues. X-ray of claimant's lumbar spine of the same date show degenerative changes at L5-S1 demonstrated in disc space narrowing. There is no spondylolysis or spondylolisthesis. X-rays of claimant's thoracic spine also show degenerative changes but with no alignment abnormalities. Claimant also had an x-ray of her right elbow in March, 2008 due to complaint of pain, and this study was negative.

MRI of claimant's lumbar spine of [REDACTED] was performed for complaint of low back pain, right radiculopathy, and pain in right hip. MRI impression is that of disk bulges at L1-2 and L3-4, and broad base disk protrusions, which are right sided, at L2-3 and L4-5.

Medical Examination Report completed on [REDACTED], has no exam date. Claimant's diagnosis is that of osteoarthritis. All of claimant's examination areas are checked as normal except that she is morbidly obese, has a heart murmur, and has limited range of motion in her right arm. Claimant is restricted in lifting/carrying up to 10 lbs. frequently.

X-ray of claimant's left shoulder of [REDACTED], for complaint of left shoulder pain revealed AC joint degenerative changes without evidence of acute fracture/dislocation.

Psychological evaluation of [REDACTED], performed for Disability Determination Service indicates that the claimant stated she has severe pain in her legs, elbows, arms, and her hip. Claimant further stated that her doctors diagnosed her with arthritis and fibromyalgia. Claimant also reported having a mini-stroke last summer and now has difficulty recalling what words she wants to say, that she is confused, and has trouble with her short-term memory.

Claimant denied ever having any psychological counseling, nor having any inpatient treatments, and also denied formal substance abuse treatment.

Claimant reported smoking 2 packs of cigarettes per day, but that she has not consumed alcohol in over 15 years. Claimant's current interests included watching baseball, TV, and going to the casino. Claimant appeared to be in contact with reality, there was no unusual motor activity or hyperactivity, and her insight and judgment appeared to be intact. Claimant's mental activity was somewhat impaired. The examiner concludes that the claimant appears to meet the criterion for a diagnosis of Cognitive Disorder, as it appears that she has had a mini-stroke by her report. Claimant does not appear to meet the full criterion for diagnosis of Vascular Dementia. Claimant also appears to meet the criterion for an Adjustment Disorder with Anxiety, due to her health condition and financial difficulties, but does not appear to meet full criterion for diagnosis of an Anxiety Disorder. Claimant's GAF is 55.

Community Mental Health assessment of [REDACTED], notes that claimant's appearance, psychomotor activity, manner/attitude, speech, emotions, thought process, thought content, sleep and appetite are all within normal limits. Claimant has experienced weight gain and decreased energy/libido. Claimant reported infrequent suicidal thoughts and denied a suicide plan or intent. Clinical impression was that the claimant needs brief outpatient therapy to address her depression, worry, stress, tension and hopeless feelings. No additional referrals were noted.

Psychiatric Assessment of [REDACTED], states as claimant's chief complaints depression, memory problems, agoraphobia, longing for her moved out children, insomnia, variable appetite with appetite declines, and chronic pain. Claimant reported having long history of depression, but has never seen a psychiatrist to prescribe medications or has never been in a psychiatric hospital. Claimant is prescribed psychotropic medication by her family physician. Claimant

gave a detailed family history including all of the names and ages of her children and grandchildren, even though she complains of memory difficulties for familiar items. Claimant was diagnosed with major depressive disorder, recurrent, most recent episode moderate without psychotic features.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. While the claimant complains of daily pain in her entire body including in her back and joints, numerous x-rays of her body reveal some degenerative changes but no significant findings. Medical reports submitted by the claimant do not indicate any neurological deficits. Claimant also reported having a mini-stroke, but there is no medical evidence to show such occurred, and claimant does not have any physical deficits resulting from the stroke. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. Claimant reports being depressed, but she has never even seen a mental health professional until 2008, around the time she applied for SSI. It is understandable that the claimant would be depressed due to her financial situation; however evidence presented does not establish that the claimant suffers from severe psychological problems. 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 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was being a waitress, a simple labor job. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is 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).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least light 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 she cannot perform at least sedentary and light work. Under the Medical-Vocational guidelines, a

younger individual age 45-49 (claimant is 48 years-old), with even limited education (claimant is a high school graduate) and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant should be able to perform at least light work.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited 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 and light 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: November 4, 2009

Date Mailed: November 10, 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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