

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: 2009-2473
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 13, 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 December 14, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits as well as retroactive Medical Assistance benefits alleging disability.

(2) On June 25, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional and that she could perform other work.

(3) On July 7, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On August 19, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 29, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a).

(6) The hearing was held on January 13, 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 January 20, 2009.

(8) On January 23, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a).

(9) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 129 pounds. Claimant is a high school graduate and also went to vocational school for nurse's aide program.

(10) Claimant is able to read and write and does have basic math skills. Claimant last worked two years as a comfort care and home healthcare aide. Claimant has also worked for [REDACTED] doing home healthcare for approximately 25 years on and off.

(11) Claimant alleges as disabling impairments: breast cancer in [REDACTED], neuropathy, degenerative bone disease in her hips and legs, degenerative disc disease at L5-S1, L1-L2, losing teeth and calcium, anxiety, depression and possibly uterine cancer.

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 for approximately two years. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that according to an [REDACTED] [REDACTED] hematology and medical oncology report, claimant had breast cancer in [REDACTED] at a very young age with hormonal positive. She had been treated with hormonal therapy, it was very difficult and she had trouble tolerating it because of significant joint pain and neuropathy, nerve

tingling and burning which she had from the chemo. Hormonal therapy exacerbated her chronic arthritis and it became a chronic problem with those medications. Claimant could not tolerate any of the medications. Claimant had significant neurological and pain issues also. Claimant also had a positive fecal occult blood. The source of the bleeding had not been found. Claimant has a history of gastric bypass and malnutrition, iron deficiency and required B-12 and iron infusions in the past. Claimant had chronic hip pain. Claimant also had an abnormal mammogram [REDACTED]. Claimant had a pelvic and transvaginal ultrasound [REDACTED]. It was determined endometrial canal was normal. There was hypoechoic area in the myometrium on the left measuring .7 x .5 x .9. This represented fibroadenoma. A DHS-49 filled out [REDACTED] by the doctor of oncology indicates that claimant's condition is stable and that she does not need assistive devices required for ambulation. She could do repetitive action with both of her upper extremities in the form of simple grasping, reaching, pushing and pulling and fine manipulating and could operate both foot and legs controls with both feet and legs. Claimant did have some mental limitations in the form of sustained concentration. All other examination areas were normal. As of [REDACTED], claimant had a new right-sided breast abnormality on one of her scans. Claimant had breast cancer of the left breast in [REDACTED].

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 a duration of at least 12 months.

There is objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body, even though there are no current corresponding clinical findings. However, claimant does have a history of breast cancer in the left breast and the current impression is that she has had an abnormal right breast mammogram also. Claimant had elevated liver function and claimant is a

BRCA genetic carrier which would indicate bilateral mastectomy as well as oophorectomy and special aggressive screening. Therefore, this Administrative Law Judge finds that claimant has established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, claimant testified on the record that she cannot drive because her eyesight is bad and has been bad for approximately one year. Claimant testified that she does make sandwiches and soup and that she doesn't grocery shop. Claimant testified that she does do some laundry and dishes and that she has a left foot bunion which needs surgery. Claimant testified on the record that she can walk 20 to 30 feet because of her joint pain and that she can stand for 10 to 15 minutes and sit for 20 minutes at a time. Claimant is able to shower and dress herself but she cannot squat, bend or tie shoes but she is able to touch her toes with pain. Claimant testified that the heaviest weight she can carry is five pounds and that she is right handed and that her hands have neuropathy in them. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication is still an 8. Claimant stated that in a typical day she washes up and then gets up and takes her vitamins and lays on the couch and watches television mostly. That she does make herself a sandwich but she doesn't do much.

At Step 4, this Administrative Law Judge finds that claimant can probably not perform her prior work as a home healthcare aide since that would involve caring for sick people, bathing them, lifting them, etc., and claimant would probably not be able to do heavy lifting based upon her recent breast cancer. Therefore, this Administrative Law Judge finds that claimant is not disqualified 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 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 sufficient objective medical evidence that she currently lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do appear to be somewhat limited and she does have an abnormal mammogram as well as genetic markers for both breast cancer and ovarian/uterine cancer. Claimant did have multiple issues including a GI bleed with a fecal blood occult being positive. Claimant is B-12 deficient.

In the instant case, claimant has established that she cannot currently perform any work. Claimant has established that she cannot perform simple unskilled light or sedentary work based upon her problems with her hands and wrists as well as with the breast cancer and the residual problems. Therefore, claimant is qualified to receive disability at Step 5. The Administrative Law Judge finds that the claimant does not retain the residual functional capacity to perform simple unskilled light work or sedentary work currently with her impairments. Claimant's complaints of pain are credible and should be noted that claimant does have an abnormal right mammogram and genetic markers for both breast and ovarian/uterine cancer. The objective medical evidence on the record establishes by a preponderance of the evidence that claimant is currently unable to perform light or sedentary work. An assessment of the claimant's residual functional capacity in terms of her age, education and work experience directs the decision that she is disabled at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant's did not meet the definition of disabled for purposes of the Medical

Assistance and State Disability Assistance benefits. The Administrative Law Judge finds that claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the December 14, 2007 application date. The department may also determine that claimant is disabled for purposes of Medical Assistance for the three retroactive months to the December 14, 2007 application date.

Accordingly, the department's decision is REVERSED.

The department is ORDERED to reinstate claimant's December 14, 2007 Medical Assistance and State Disability Assistance benefit application and if claimant is otherwise eligible, the Department is ORDERED to open an ongoing Medical Assistance and State Disability Assistance benefit case for claimant effective December 14, 2007 and also any retroactive period to which she is entitled.

The department is also ORDERED to conduct a review of claimant's condition in February 2010. At that time, the department shall assist claimant in obtaining all updated medical information to include both a psychological examination and a complete physical examination as well as updates from her hematology and medical oncology specialists.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 10, 2009

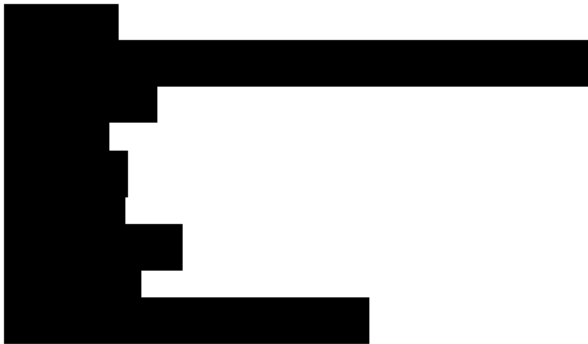
Date Mailed: February 22, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

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