

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: 2009-26751
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2009
Genesee 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 22, 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 February 23, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 28, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On May 5, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On May 11, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 2, 2009, the State Hearing Review Team again denied claimant's application stating that she retains the capacity to perform a wide range of simple, unskilled, light work.

(6) Claimant is a 45 year-old female who is 5'5 ½ " tall and weighs 161 pounds, after gaining about 30 lbs. in the last 2 years due to her bad back causing her inability to move around a lot.

(7) Claimant has a high school diploma and can read, write and do basic math.

(8) Claimant is not currently employed and last worked from 1999 to 2002 as a cleaning service owner, employment that ended when the economy turned for the worse. Claimant was supported by her husband up to 2005 when she was divorced and received a divorce settlement, and now lives with a friend who supports her.

(9) Claimant alleges as disabling impairments: chronic back pain that causes her to walk with a cane, depression, anxiety and panic disorder, COPD and starting of arthritis.

(10) Claimant has been denied Social Security disability with a decision rendered on May 27, 2009 and testified she appealed this decision to SSA Appeals Council.

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 2002. 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes a Medical Examination Report of [REDACTED], stating that the claimant has "progressive problems past few years and worsening", and lists as current diagnosis depression, general anxiety disorder, sacroilites left, and lists as physical limitations that she cannot lift/carry more than 10 lbs. occasionally, stand/walk less than 2 hours in an 8-hour work day, and sit less than 6 hours in an 8-hour workday. Claimant does not require any assistive devices, can use both hands/arms for repetitive actions, but cannot operate foot/leg controls. Claimant's mental limitations are in comprehension, sustained concentration and social interaction, but she can meet her needs in the home without assistance.

Claimant underwent a psychological test on [REDACTED]. Claimant arrived early for her appointment; she drove herself and was unaccompanied. Hygiene and grooming were good, but claimant walked with a limp due to a back injury. Claimant was perceptually oriented and presented her ideas in a logical and coherent fashion. Speech was readily understandable with no impediments, and claimant was able to self-disclose regarding her psychiatric, substance abuse, and legal histories and was a very good historian. Claimant denied having any history of suicidal feelings or psychiatric hospitalization. Claimant reported being happy and liking people. Claimant's current diagnostic impression was that of reactive depression and anxiety secondary to medical and financial problems, and it was noted that she should be capable of independently managing any benefits assigned if the obtained substance abuse history is accurate (as the claimant denied using any type of recreational drugs during the testing).

Claimant was at New Passages in October, 2008 and presented with being depressed since 1996, about the time she started having marital problems. Claimant's family practitioner has been treating her for about 13-14 years for her depression and anxiety and is now recommending that she seek psychiatric care. Claimant reported no significantly diminished interest in many pleasures, no problems with sleep disturbance, no disturbance with appetite, no difficulties with restlessness, or concentration problems, no psychomotor activity or retardation, no suicidal ideation problems, and no delusional or hallucinatory ideations. Claimant was oriented, stream of thought lucid and intact, affect appropriate and congruent, and demeanor pleasant. It was noted that the claimant may not have been forthcoming in regards to her prior substance abuse use, as she reported not using alcohol because of the medication she is on, and stated that she last used marijuana over 20 years ago and that she never used other illegal substances. However, the clinical record from CMH indicated prior diagnosis of Cannabis intoxication and cocaine

intoxication back in 2004. Claimant's risk assessment was low to none, as she reported no history or problems with suicidal ideations, and that she only gets into fights when someone becomes aggressive towards her. Claimant was diagnosed with depressive disorder.

Letter from claimant's doctor dated [REDACTED], states that she is being treated for postfusion lumbar spine, L5-S1, failed disc syndrome, general anxiety disorder with depression, and chronic and migraine headaches. Doctor states that the claimant is unable to work at the present time and has not been able to work for a number of months or years, "if I am correct", and this is due to persistent low back pain with radiation to the left leg and numbness and tingling involving the left leg. Claimant's restrictions are listed as being unable to stand in one spot for more than 15 minutes, walk for upwards of more than 30 minutes, and unable to end, to turn, to twist, to reach over her head without pain and she has a lifting limit of approximately 10 lb. Claimant is also listed as having difficulty doing her activities of daily living, primarily cleaning and washing clothes and also shopping, and the doctor believes that the medication makes her tired and drowsy and groggy, but she needs them to balance her emotional situation.

Claimant testified that her COPD is new diagnosis and that it is "mild", and that she has "starting" of arthritis in her hands. Claimant also testified that she tested positive last month for marijuana and amphetamines, but she does not know why as she does not smoke marijuana. When told that there is no false positive test for marijuana, claimant responds that she is around marijuana smokers a lot and her positive test was most likely due to second hand smoke.

Claimant has presented some evidence that she is suffering from back pain but none that rise to the level of a severe impairment. Claimant's mental health records also do not show that she has issues that would rise to the level of a severe impairment. Therefore, there is no

objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about her physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

The evidentiary record is insufficient to find claimant suffers a severely restrictive physical and/or mental impairment. 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 could conclude giving great weight to her treating physician's opinion which does not have persuasive basis in any medical tests that were provided, that she could not perform past relevant work of performing cleaning work. Claimant otherwise has a very minimal work history in the last 10 years, as she reported mainly being supported by her husband and then a friend. Finding that the claimant is unable to perform work which she has engaged in in the past could therefore be reached 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 is physically unable to do sedentary and 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 45), with even limited education and an unskilled or no work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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: September 2, 2009

Date Mailed: September 9, 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.

IR [REDACTED]

cc: [REDACTED]