

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: 2009-26898
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 6, 2009
Jackson 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 upon claimant's request for a hearing. After due notice, a telephone hearing was held on August 6, 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) March 4, 2009, claimant applied for MA and SDA.
- (2) April 10, 2009, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) May 1, 2009, the department sent claimant written notice that the application was denied.

(4) May 7, 2009, the department received claimant's timely request for hearing.

(5) July 1, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) August 6, 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. April 7, 2010, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 4-7-10.

(7) Claimant asserts disability based on impairments caused by arthritis, muscle spasms, bad back, myalgia, depression, anxiety, and mood swings.

(8) Claimant testified at hearing. Claimant is 48 years old, 5'1" tall, and weighs 190 pounds. Claimant completed high school and a semester of college. She is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive but prefers not to. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a semi-truck driver, school bus driver, and pizza restaurant manager.

(10) On or about February 23, 2009, claimant underwent an initial adult diagnostic assessment and a report was prepared. Axis I diagnosis was major depression. GAF was assessed at 58. The report indicates that claimant's immediate, recent, and remote memory were impaired. Claimant could not recall the date at exam. Claimant exhibited anxiety, sadness, and depression. She exhibited increased lability or affect. The report indicates numerous family issues and situational issues. Department Exhibit A, pgs 119-132.

(11) On or about June 2008, claimant underwent a laminectomy at L1-2. Treatment notes 13 days following surgery indicate that claimant is definitely improved at this time and still having some leg pain. Her incision is well healed and there is no evidence of infection. She is walking without difficulty. The location of her maximal tenderness appears more at T5 and T9 areas and her MRI of the thoracic spine is reviewed showing multiple levels of degenerative disc disease and posterior facet hypertrophy causing mild stenosis at multiple levels. No significant spinal cord impingement at this time. Department Exhibit A, pg 6.

(12) On or about August 8, 2008, claimant presented to the emergency room indicating that she had been in a motor vehicle crash the previous day. She complained of a sudden, severe onset of pain to her neck and shoulder. Physical examination revealed in pertinent part: bones and joints display no deformity or swelling. Upper and lower extremities show equilateral muscle contour and tone with strength commensurate with size, sex, and age. Joints display no swelling, crepitus, or effusions. There is no decreased range of motion. Strength to flexion, extension is 5/5 bilaterally to ankles and great toes. Neurologic exam was within normal limits. Station and gait are intact. Finger to nose test intact. Babinski test normal. Heel, toe, and tandem walking intact. Romberg test negative. Claimant was discharged in stable condition. Department Exhibit A, pgs 7-8. On August 24, 2008, a repeat visit to the emergency room revealed claimant has pain to palpation of both shoulders, left greater than right, with decreased range of motion secondary to pain. There is no erythema or crepitation or soft tissue swelling. Remainder of the musculoskeletal exam is unremarkable. Department Exhibit A, pgs 9-10.

(13) September 29, 2008, claimant was examined by her physician. Treatment notes were prepared that indicate a CT scan had been performed and a report prepared that indicate spondylolytic changes with some calcification of the disc bulges at both C5-6 and C6-7 levels

causing the moderate amount of stenosis. Doctor indicates that claimant has chronic back pain, physical, thoracic and lumbar with some potential radicular complaints that are vague and not consistent with a particular cervical radiculopathy, nor did patient improve from previous L1-2 decompressive surgery. Doctor recommended pain management. Department Exhibit A, pgs 17-18.

(14) December 31, 2008, claimant presented a physical therapist for evaluation. Objective exam revealed no redness or swelling, healed incision scar over L1 and L2 area; tenderness over L1 to L3 area; sensation normal; range of motion left lower extremity 20 degrees, right lower extremity 60 degrees; strength of low back 3+. Treatment recommended was therapeutic exercises, therapeutic massage, and home exercise program. Claimant indicated she did not wish to participate in treatment and terminated care that same day. Department Exhibit A, pgs 20-22. Claimant returned to physical therapy on or about February 4, 2009. Objective medical exam revealed similar results as exam on 12-31-08. Treatment recommendations were same. Claimant attended two sessions of therapy and reported feeling better. Therapist indicated there was not much change in her condition. She was to continue therapy for approximately four weeks. Department Exhibit A, pgs 23-24.

(15) MRI conducted February 21, 2009, revealed multilevel degenerative changes of the cervical spine most significant at C5-C6 and C6-C7 causing moderate narrowing of the spinal canal and bilateral neuroforamina; no evidence of acute fracture; straightening of the normal lordosis likely related to positioning of spasm; diffusely sclerotic bones which may be seen in the multiple conditions including myelofibrosis, lymphoma leukemia, or renal osteodystrophy, etc. Report author indicates correlation should be obtained. Department Exhibit A, pgs 37-38.

(16) February 21, 2009, claimant underwent chest x-rays that revealed a negative chest x-ray. Department Exhibit A, pg 43. February 21, 2009, claimant underwent x-rays of the lumbosacral spine that revealed no acute lumbosacral abnormality; L1-L2 disc degeneration. Department Exhibit A, pg 42. February 21, 2009, claimant underwent x-rays of the thoracic spine that revealed no acute thoracic spine abnormality; unremarkable exam for the patient's age. Department Exhibit A, pg 41. February 21, 2009, claimant underwent x-rays of the left knee that revealed no acute abnormality; tricompartmental degeneration. Department Exhibit A, pg 40. February 21, 2009, claimant underwent x-rays of the right knee that revealed tricompartmental degeneration and no acute abnormality. Department Exhibit A, pg 39. February 21, 2009, claimant underwent a CT scan of the cervical spine that revealed multilevel degenerative changes of the cervical spine most significant at C5-C6 and C6-C7 causing moderate narrowing of the spinal canal and bilateral neuroforamina; no evidence of acute fracture; straightening of the normal cervical lordosis likely related to positioning or spasm; diffusely sclerotic bones which may be seen in the multiple conditions including myelofibrosis, lymphoma leukemia, or renal osteodystrophy, etc. Please correlate. Department Exhibit A, pgs 37-38. The record indicates that claimant has visited her physician numerous times during 2008 and 2009 complaining of chronic pain. Doctor indicates that claimant is in chronic pain and is somewhat tortured by this. Arthritic changes are noted throughout the upper and lower extremities with concomitant knee and shoulder bursitis with muscle spasm and myalgia. Dorsal and lumbar somatic dysfunction is noted with paravertebral muscle spasm, muscle myalgia, pain on palpation, and restriction of movement. Department Exhibit A, pgs 44-117.

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 or had depression. Assessment indicates claimant had impairment of memory and exhibited anxiety and mood swings. GAF was assessed at 58, indicative of moderate to mild symptoms or difficulties. The objective medical evidence of record indicates that during 2008, claimant underwent a lumbar laminectomy. She appeared to improve after the surgery. She later complained of chronic lumbar pain. Claimant complained of chronic shoulder pain with reduced range of motion. She has degenerative changes in knees bilaterally. Claimant's physician indicates that she has severe back spasms and chronic pain that prevent her from performing any physical activities such as lifting, standing, and/or walking two hours in an eight-hour day, repetitive actions with upper extremities, and operating foot and leg controls. Department Exhibit A, pgs 146-147. Claimant's physician also indicated in a letter that claimant suffered severe pain and required assistance with bathing, dressing, household chores, and cooking. Claimant Exhibit A. These severe restrictions

are not consistent with the objective medical evidence of record. Objective medical evidence must be given greater legal weight. Accordingly, doctor's recommendation of severe restrictions must be given less legal weight. Finding of Fact 10-16; 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 semi-truck driver, school bus driver, and manager of a pizza restaurant. See discussion at Step 2 above. Finding of Fact 9-16.

At Step 4, the objective medical evidence of record is 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 not 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 10-16.

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 (younger individual, high school education, and history of

semi-skilled employment) and relying on Vocational Rule 202.20, 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 and 5 above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent all 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 that 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: April 22, 2010

Date Mailed: April 22, 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 receipt 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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