

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: 2009-28130
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 8, 2009
Macomb 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 September 8, 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 6, 2009, claimant filed an application for Medical Assistance, State Disability Assistance, and retroactive Medical Assistance benefits alleging disability.

(2) On May 26, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On May 29, 2009, the department caseworker sent claimant notice that her application was denied.

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

(5) On July 15, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13 and commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this.

(6) The hearing was held on September 8, 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 September 8, 2009.

(8) On September 15, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13 and stated that the additional information received does not significantly affect the residual functional capacity to perform at least unskilled, light work. The State Hearing Review Team's decision of July 15, 2009 is upheld.

(9) On the date of hearing, claimant was a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 225 pounds. Claimant graduated from high school and took one computer class. Claimant is able to read and write certain things and does have basic math skills but counts on her fingers.

(10) Claimant is currently employed working two times per week, three hours per day, wiping dishes and emptying garbage cans in a lawyer's office. Claimant earns between \$340 and \$360 per month or approximately \$80 per week which she has been doing for the last ten years. Claimant has also worked as a bus transportation aid and as room aid at a school cleaning chalkboards.

(11) Claimant alleges as disabling impairments: neck surgery, neck and back pain, numbness in the neck and feet, comprehension problems, memory loss, hearing loss, a motor vehicle accident in [REDACTED], insomnia, and headaches.

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 engaged in substantial gainful activity and should be disqualified from receiving disability at Step 1. However, because her income is below the substantial gainful activity income level, this Administrative Law Judge will not disqualify her from receiving disability. However, claimant is performing janitorial basically wiping dishes and emptying garbage cans which is considered to be light work.

The objective medical evidence on the record indicates that a Mental Residual Functional Capacity Assessment in the record indicates that claimant is only moderately limited in a few areas and not significantly limited in most areas. Claimant has moderate impairment in functioning in the areas of the ability to understand and remember detailed instructions, the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods of time, and the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The claimant is capable of performing unskilled work per [REDACTED] (pp. A2-A4)

A Physical Residual Functional Capacity Assessment contained in the file dated [REDACTED] [REDACTED] indicates claimant had a primary diagnosis of cervical discectomy and could occasionally lift ten to twenty pounds, frequently lift ten pounds, stand about six hours in an eight-hour workday and sit about six hours in an eight-hour workday. Claimant was able to push or pull in

unlimited fashion other than as shown for lift and/or carry. Claimant had a brain MRI in [REDACTED] which was normal and a brain MRI [REDACTED], changes likely to motor vehicle accident and consistent with small vessel ischemic changes. In [REDACTED] there was a large central disc herniation at C5-C6 with moderate canal stenosis. There was a disc protrusion at C6-C7 with mild canal stenosis with minimal degenerative changes of the facets, no evidence of herniation or stenosis. In [REDACTED] claimant had a normal EEG. On [REDACTED] there was a C5-C7 anterior cervical discectomy and fusion performed. In [REDACTED] the EMG was normal. In [REDACTED] a right shoulder ultrasound showed degenerative changes along dorsal aspect of the acromioclavicular joint. On exam in [REDACTED], claimant walked with a steady gait, without a walking aid, had decreased hearing on the left yet right side hearing was not limited. There was decreased range of motion of the C-spine, but no spasms, motor uniform, and SLR, decreased range of motion at L-spine. Claimant could frequently climb stairs or ramps, but never climb ladders, ropes, and scaffolds. Claimant could occasionally balance, stoop, kneel, crouch, and crawl. Claimant had no manipulative limitations, no visual limitations, no communicative limitations, and no environmental limitations. The symptoms part of the activities of daily living sheet indicated that claimant had multiple complaints relating to her physical impairments. Her activities of daily living show that she completes household care and prepares simple meals. She drives and shops and goes out daily. Her symptoms are reasonable and based on an MDI; however, despite pain and some limitations, her functioning is pretty stable. She is partially credible. (pp. A1-A11)

Claimant testified on the record that she does have a driver's license and she does drive four hours a day to work and then goes to her daughter's and the farthest she has to drive is ten miles. Claimant testified that she does cook everyday and cooks things like TV dinners. Claimant

testified she does grocery shop two times per week with no help. Claimant testified that she cleans her home by doing the laundry, dishes, and making her bed. Claimant stated that she plays cards for a hobby and usually plays euchre. Claimant testified that she can walk twenty feet at a time and she can stand for fifteen to twenty minutes at a time and can sit for a half an hour at a time. Claimant is able to shower and dress herself and cannot squat because she loses her balance. Claimant testified that she cannot tie her shoes because her hands hurt. Claimant testified that she can touch her toes. The heaviest weight claimant can carry is ten pounds and she is left-handed and her hands and arms are always numb. Claimant's level of pain on a scale from one to ten without medication is an eight and with medication is an eight. Claimant testified that in a typical day she sits and watches television ten hours per day.

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 the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish claimant has a severely restrictive physical or mental impairment. Claimant was oriented to time, person, and place during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions. 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.

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 claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant does currently perform her past relevant work as a janitor for a law office. Claimant's past relevant work is light work. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which she is currently engaged in. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

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.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: January 4, 2010

Date Mailed: January 4, 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.

LYL/vmc

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