

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: 2009-29215
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2009
Wayne 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 23, 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 5, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 28, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 1, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On June 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 27, 2009, the State Hearing Review Team again denied claimant's application and requested additional medical information.

(6) The hearing was held on September 23, 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 November 23, 2009.

(8) On November 25, 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 202.10.

(9) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 4' 11" tall and weighs 100 pounds. Claimant attended the 12th grade and has no GED. Claimant testified she can't really read and write, but she can add but can't count money.

(10) Claimant alleges that she last worked in 2002 as a grocery store stocker. Claimant has also worked at the [REDACTED] hanging clothes and doing laminate boards.

(11) Claimant alleges as disabling impairments: depression, back pain, numb legs, and comprehension problems.

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 since 2002. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a formal mental status examination dated [REDACTED] indicates that claimant was not on any medications.

Claimant was essentially homeless and she stayed on and off the street with some people she might know for the past two years. She said sometimes she has to stay on the streets all night.

She has only one friend. She said she argues constantly with her adopted mother but gets along with the rest of her family okay. She appeared to have a constricted range of affect and to be anxious and depressed. She was also able to be friendly and polite. She complained that she is often depression, anxious, and nervous, has angry rages, and sometimes feels suspicious of others and her usual mood is up and down. She said she is fearful of dying. She complained of trouble with her memory, attention, and concentration. She was oriented to time, person, purpose, and place. She repeated 4 numbers forward and 3 numbers backward which was poor for attention and concentration and memory for numerical materials. She recalled none of 2 objects after three minutes of interpolated interview activity which is subnormal. When asked to name a few Presidents, she said, Bush and Clinton and she didn't know of any others. When asked who our current President is now she said, Obama. She knew her birth date by memory, but not her Social Security number by name. To name 5 large cities she said, New York, Washington, California, Florida, and Michigan. She couldn't think of any famous people and didn't watch television enough to know who is famous. She didn't know any news events. She stated she couldn't subtract Serial 7's and she couldn't subtract 3 from 30. She spelled the word "world" correctly and when asked to spell it backwards she said, "dlow". She counted correctly from 10 down to 1. She was slow and wrong when adding $11+17 = 113$. She was asked how she got that and she said, carry the 1 to the 7. She did not know 2×8 or 2×4 because she stated she never learned times. She was correct with $3+3$ and $4+7$, but did not get $8/4$ and stated she never learned division. The translation of the proverb, the grass is always greener on the other side of the fence; she said that, it's not always as green as it looks. The translation of the proverb, don't cry over spilled milk; she stated, don't worry about little things. When asked how a bush and a tree are alike; she said they are not, one is a bush. This shows notable problems with abstract

thought capacity. When asked how a bush and a tree are different; she said, shape-wise a tree is bigger than a bush. In judgment, if a stamped, addressed, sealed envelope was found on the sidewalk she would put it in the mailbox. If there was a fire discovered in a crowded movie theater, she would tell everyone to run. Her plans for the future, she stated, she has never had any plans. Her working diagnosis was major depression, notable expressive language disorder, cognitive disorder, NOS, PTSD, polysubstance abuse, allegedly alcohol addiction in full sustained remission 10 years. Cannabis dependence in full sustained remission alleged 20 years, crack cocaine abuse alleged full sustained remission 20 years and mescaline abuse in full sustained remission 20 years, chronic pain disorder, and a nicotine addiction as well as possible borderline intellectual functioning with commensurate deficits or worse in reading, writing, and arithmetic that would need to be tested out psychometrically. Her GAF was 45 and her prognosis was poor and she would not be able to manage financial benefits. She appeared to be able to manage activities of daily living. (pp. 2-7 of the new information)

A [REDACTED] assessment of [REDACTED] indicates that claimant was examined in the presence of a medical assistant. She was 50 years and height was 4' 11", weight 96 pounds, blood pressure 120/80, temperature 98 degrees Fahrenheit, pulse 80 per minute and regular, and respiration was 16 per minute and regular. HEENT: Sclera, PERLLA normal. No nystagmus. Fundi were normal. Ears were clear. She had dentures in the upper jaw and loss of several teeth in the lower jaw. Neck was supple. Thyroid was not enlarged. No lymphadenopathy. Jugular venous pressure was normal. Carotid arterial pulsations were normal. No carotid bruit. The chest was clear to auscultation and percussion. CVS: PMI was normal in position and character. Heart sounds were normal. No murmur, no gallop rhythm. The abdomen was soft, no organomegaly or tenderness. Bowel sounds were normal. The skin had no rash or pigmentation. No ulceration or

gangrene. The extremities had no cyanosis, clubbing, edema, or lymphadenopathy. No calf muscle tenderness. Homan's sign was negative. Peripheral pulsations were well palpable. In the spine the claimant could stand erect without support. No loss of lumbar lordosis. There was no tenderness or paraspinals muscle spasm. There was tenderness of the lumbar spine. All movements of the lumbar spine were painful and restricted: flexion to 60 degrees, extension 20 degrees, lateral bending 20 degrees and rotation 20 degrees. Straight leg raising test was 90 degrees on both sides and claimant complained of pain over the lower part of the back during the procedure. In the bones and joints all movements of the left knee joint were painful, but no limitation of movement. There was no pain, swelling, limitation of movements or crepitus in any other joints. Grip was good in both hands (5/5) tested manually. Muscle power was good in all the extremities. There was no wasting of muscles around the joints. Gait and stance were normal. The claimant could walk tiptoe, tandem gait or on the heel, but claimant could not squat more than 50% due to pain in the left knee joint and pain and limitation of movement of the lumbar spine. Claimant could get on and off the examination couch from the supine position. She could dress, undress, and write legibly. In the nervous system, higher functions, she was oriented to time, place, and person. Speech was normal. Memory was fairly good. The claimant could remember day, date, month, year, and names of the Presidents. Cranial nerves II-XII were normal. Power, tone, and sensations were normal. Deep tendon reflexes were 2+ and equal bilaterally. Plantars were flexor bilaterally. Romberg sign was negative. Cerebellar functions were normal. Gait was normal. The diagnosis and impression was osteoarthritis of the lumbar spine and left knee joint with functional limitations orthopedically and chronic alcoholism, but currently in remission. Clinically there was no evidence of hepatitis or hepatic failure.

Depression, memory was fair. She was in fair grooming and hygiene. She responded fairly well to the examination situation. (pp. 4-6 of the prior information)

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. Claimant has reports of pain in her back and multiple areas of her body; however, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There was no impression that claimant is deteriorating. 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 that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The objective psychiatric report indicates that claimant was oriented to time, person, and place during the consultative exam. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment.

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).

There is insufficient objective medical evidence that shows that claimant cannot perform her activities of daily living and the objective medical evidence contained in the record does not establish depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports, it is documented that she has had heavy use of alcohol as well as prior drug use which would have contributed to her physical and any alleged mental 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 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's past relevant work was light work. As a stocker does not require strenuous physical exertion, there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again 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 insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant did testify on the record that she lives in her sister's basement and she's single with no children. Claimant does have a driver's license and is able to pass the test and she does drive to the grocery store and to the Department of Human Services. Claimant stated that the farthest she has to drive is 8 miles. Claimant does cook everyday and makes things like salad, hamburgers and hotdogs. Claimant does grocery shop one time per month and sometimes needs help carrying or reaching the groceries. Claimant testified she makes her bed and does the laundry. Claimant testified that she can walk a half a block, stand for 10 minutes, and can sit for 10-15 minutes at a time. Claimant testified she can shower and dress herself but not squat. She can bend a little at the waist and tie her shoes while sitting down, but not touch her toes. Claimant testified that the heaviest weight she can carry is 15 pounds and that she is left-handed and her hands and arms are fine. Claimant testified that her legs and feet are fine but her right leg does hurt. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and that she doesn't take any medication. Claimant testified that she does smoke 3 cigarettes a day and she's trying to quit and her doctor has told her to quit. This Administrative Law Judge finds that claimant is not in compliance with her treatment program as she does continue to smoke despite the fact that her doctor has told her to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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 light or sedentary work even with her impairments.

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, p. 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 light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: March 10, 2010

Date Mailed: March 10, 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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