

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: 2009-29898

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 26, 2009

Tuscola 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 August 26, 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 January 2, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 25, 2009, the Medical Review Team denied claimant's application.

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

(4) On June 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 3, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments are non-severe per 20 CFR 416.920(c).

(6) The hearing was held on August 26, 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 August 26, 2009.

(8) On August 28, 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 202.17.

(9) Claimant is a 42-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 185 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked approximately three years before the hearing stuffing newspapers. Claimant has also worked in an [REDACTED] home taking care of patients, as a waitress, and as a bartender.

(11) Claimant receives the Adult Medical Program and Food Assistance Program benefits.

(12) Claimant alleges as disabling impairments: anxiety, depression, bipolar disorder, adult attention deficit disorder, panic attacks, degenerative tissue in the knees, diabetes mellitus, sensory neuropathy, joint effusion, and carpal tunnel syndrome.

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 last worked approximately three years before the hearing. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a MRI of the left knee taken [REDACTED] indicates that the cruciate and the lateral ligaments were intact. There was a small joint effusion. There was a small focus of increased signal intensity change within the distal quadriceps tendon just superior to the patella. Patellar tendon was intact. There were mild degenerative signal changes in the posterior horns of the menisci. The impression was a small joint effusion and a small partial tear in the distal quadriceps tendon and mild degenerative changes in the posterior horns of the menisci. A [REDACTED] MRI of the right knee indicates that the cruciate and collateral ligaments were intact. There was mild to moderate degenerative signal change in the posterior horn of the medial meniscus. There was a very small tear in the posterior horn lateral meniscus. Cruciate and collateral ligaments were intact. There was no significant joint effusion.

A physical examination dated [REDACTED] indicates that the claimant was cooperative in answering questions and following commands. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the examination. Her vital signs were: blood pressure in the right arm equals 130/80, pulse equals 82 and regular, respiratory rate equals 16. Weight was 188 pounds. Height was 67" without shoes. The skin was normal. The eyes revealed visual acuity in the right eye equals 20/25, and the left eye equals 20/25, with corrective lenses. Pupils were round, equal, and reaction to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. In the chest breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. The heart had regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular

there was no clubbing, cyanosis, or edema detected. The peripheral pulses were intact. Hair was present and feet were warm with normal color. In the musculoskeletal area there was no evidence of joint laxity, crepitation, or effusion. Grip strength remained intact on the right and was decreased with 70% remaining on the left. Dexterity was unimpaired. Tinel's was positive on the left. The claimant could pick up a coin, button clothing, and open a door. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, and mild difficulty squatting. Range of motion studies of the joints was full. Neurologically, the cranial nerves were intact. Motor strength and tone were normal. Sensation was absent to pinprick, proprioception, temperature, and vibration in both feet. There was areflexia in the lower extremities. Romberg testing was negative. The claimant walked with a small stepped gait without the use of an assist device. There was no evidence of decompensating congestive heart failure on exam. There was evidence of peripheral neuropathy in both feet in a stocking distribution. Sensation was absent to pinprick, proprioception, temperature, and vibration. The claimant had mild difficulty doing orthopedic maneuvers. Elimination of Neurontin and titrating up to maximum dose of Lyrica would be beneficial. Her grip strength was intact on the right and there was 70% remaining on the left. Hand dexterity was unimpaired. Tinel's was positive on the left only.

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 multiple areas of her body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. A Medical

Examination Report in the file indicates that as of [REDACTED], the clinical impression is that claimant was stable and deteriorating which is inconsistent. She could occasionally lift less than 10 pounds, but never lift 10 pounds or more. She did not need assistive devices for ambulation. The claimant could use neither arms nor hands for simple grasping, reaching, pushing/pulling, fine manipulating, or neither foot/leg for operating foot and leg controls. She had limitations in memory, sustained concentration, following simple directions, and social interaction. (pp. 20-21) However, the Medical Examination Report is not consistent with the objective medical findings in the file. A [REDACTED] partial evaluation dated [REDACTED], indicates on physical examination claimant had no atrophy in her knees. Her gait was satisfactory. Range of motion in both knees was 0-135. Collaterals were intact. Cruciates were intact. Appley's and McMurray's were negative bilaterally. Patellar grind was negative. Apprehension test was negative. The x-ray of both knees in AP and lateral were within normal limits. (pp. 11-12) There is no medical finding that claimant has a deteriorating condition in the file. 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, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon claimant's 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 impairment.

The objective medical evidence in the file as it relates to claimant's mental condition indicates that at a psychiatric appointment dated [REDACTED], claimant came to the appointment with her daughter. She reported a weight of 175 pounds and a height of 5' 6". Posture and gait were unremarkable. Clothing was a bit dirty. Hygiene was fair. Mood was

depressed and anxious. She was cooperative. She denied any difficulty finding the location and arrived at the appointment five minutes early. Her thoughts were spontaneous and well-organized. There were no problems in pattern or content of speech. She denied the presence of any auditory or visual hallucinations, delusions, obsessions, persecutions, or unusual powers. She reported feelings of worthlessness, but no current suicidal ideation. There were no fluctuations in her weight over the past year. She reported ongoing sleep disturbances. She was oriented x3. She correctly stated the year as 2009 and her current address as [REDACTED]. She was able to recall five digits forward and three digits backward. She was able to recall two out of three objects after a three-minute interval. She named the current president as Obama and the past presidents as Bush and Clinton. She was unable to identify the president prior to Bush. She correctly stated her birth date as [REDACTED]. She named five large cities as Detroit, Chicago, Fort Lauderdale, Dallas, and New York. She named current famous people as Obama and Bruce Willis. When asked to identify current events she identified the war and the coming of the end of the world. Performance on serial seven's was as follows: 100, 93, 87, 80, 73, 66, 59, and 52. Performance on single digit addition and multiplication was as follows: $9+8=17$, $12-7=5$, $5 \times 5=25$, $8 \times 7=56$, and $36/4=9$. When asked the meaning of the saying the grass is always greener on the other side of the fence she replied there is always something better out there. When asked the meaning of the saying don't cry over spilled milk she replied things could be worse. When asked how a bush and a tree were alike she replied they both have leaves. When asked how they were different she replied one is short and one is tall. When asked what she would do if she found a stamped addressed envelope lying on the sidewalk she replied, give it to the post office. When asked what she would do if she discovered smoke or fire in a theater, she responded I would yell and run out. The results of the mental status examination revealed no abnormalities in

mental capacity. Throughout the evaluation she was cooperative and attentive. She was diagnosed with major depressive disorder, social anxiety disorder, and a GAF of 55 with a guarded prognosis.

There is insufficient objective psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state.

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).

The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment which would keep her from performing any job. 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. This Administrative Law Judge finds that claimant could probably work stuffing newspapers or as a waitress even with her impairments. There is insufficient objective 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. There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. . Claimant did testify on the record and 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.

Claimant did testify on the record that she does cook things like noodles and things have diabetic guidelines on a daily basis. Claimant testified that she does clean her home by doing dishes, light dusting, and laundry. Claimant testified that she can walk for an hour for about a quarter mile, stand for an hour at a time, and sit as long as she needs to. Claimant testified that she can shower and dress herself, tie her shoes, bend at the waist, but not squat or touch her toes. Claimant testified that the heaviest weight she can carry is 10 pounds and that she is left-handed and that she does have some carpal tunnel syndrome and tendonitis in her hands. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 6 and with medication is a 4. Claimant testified that she does continue to smoke a half a pack of cigarettes per day even though her doctor has told her to quit and she is going to be in a smoking cessation program. Claimant testified that in a typical day she takes her teeth out and brushes her teeth, then waters her dog, and calls her daughter for help. She goes to the bathroom, takes a walk for a quarter mile sometimes and sits in the house.

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. Claimant did testify that she does receive some relief from her pain medication. 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. Under the Medical-Vocational guidelines, a younger individual (age 42), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

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 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: October 23, 2009

Date Mailed: October 23, 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

cc:

