

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: 2009-30333

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 22, 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 22, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On November 20, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

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

(3) On April 7, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On June 22, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 4, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work per 20 CFR 416.920(e) and commented that the claimant retained the residual functional capacity to perform medium work. Past work was sedentary. The claimant retains the capacity to return to past relevant work.

(6) The hearing was held on September 22, 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 2, 2009.

(8) On November 4, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work and commented that the claimant has degenerative disc disease in the lumbar and cervical spine without significant neurological abnormalities. The claimant is able to perform light work.

(9) Claimant is a 50-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 125 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked December 31, 2008 as a home healthcare aid for approximately 10 years. Claimant also worked as a travel agent for 19 years.

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

(12) Claimant alleges as disabling impairments: degenerative joint disease, shoulder, neck and back pain, joint pain, vision problems, dental problems, as well as slower thought process.

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 December 31, 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a physical examination conducted [REDACTED] indicates that claimant had near full range of motion about the cervical spine. She did have some pain upon rotation to the extremes. She had some pain upon palpation of the paraspinal cervical musculature which did elicit some tenderness over the suboccipital nerve distribution in a tension-like headache pattern. She had negative Spurling's test. Upper extremity motor examination demonstrated full strength with deltoid, biceps, triceps, wrist extensors, wrist flexors, and interosseous. She had normal sensory distribution to light touch in the bilateral upper extremity dermatomal distributions. She had +2/4 radial normal pulses with brisk cap refill. Lumbar spine demonstrated some tenderness upon palpation in the paraspinal musculature as well as the midline structures. There was no palpable step-off. Bilateral lower extremity exam demonstrated normal motor and sensory exams with +2 reflexes in the patella tendon and Achilles reflexes. Toes were downgoing with Babinski.

X-ray examination of the cervical spine as well as the lumbar spine reviewed demonstrated fairly significant degenerative changes noted at the C4-C5, C5-C6, and C6-C7 levels. There appeared to be some mild to moderate facet arthropathy at these levels as well. There were significant degenerative changes within the disc space with associated spurring anteriorly. The lumbar spine demonstrated similar degenerative disc disease changes noted throughout the lumbar spine with disc space narrowing and peripheral osteophytes. No significant foraminal stenosis was appreciated. The impression was cervical degenerative disc disease and lumbar degenerative disc disease. (p. 86)

A [REDACTED] orthopedic clinic report indicates that an MRI of the cervical spine was done on [REDACTED]. The MRI showed evidence of multiple levels of degenerative disc disease predominantly at C4-C5, C5-C6, and C6-C7. There was also evidence of zygapophyseal

hypertrophic arthropathy. The plan was to recommend the claimant go through a course of physical therapy for a period of 4 weeks. (pp. 90-91)

A [REDACTED] examination indicates that the claimant was alert and oriented x3. Height was 5'4", weight was 138 pounds. Blood pressure was 120/80. Visual acuity was 20/30 in the right eye and 20/30 in the left eye. Both eyes were 20/30 without glasses. HEENT: Pupils were equal, round, and reactive to light. Extraocular movements were full. No icterus. No conjunctival pallor. The fundi were benign. No exudates or papilledema noted. There was no JVD. No carotid bruits. No cervical lymphadenopathy. No thyromegaly. The throat was clear. There was no thrush noted. The tongue was central. The neck was supple with full range of motion. No lesions noted on the tongue. Chest: Lungs were clear to auscultation bilaterally. Cardiovascular: S1 and S2 were regular. No murmur or gallop noted. PMI was not displaced. Abdomen: The abdomen was soft and non-tender. No masses were felt. Bowel sounds were normal. There was no organomegaly. Musculoskeletal: Range of motion of the C-spine was full. Range of motion of the thoracolumbar spine was full. There was no midline spine tenderness. Bilateral knees and hips had full range of motion. Bilateral shoulders, elbows, and wrists had full range of motion. The dorsalis pedis was bilaterally 2+. No pedal edema. No clubbing or cyanosis. Capillary refill was intact and normal. Gait was normal. No cane was used by the claimant. No limp was noted. Neurological: Claimant was alert and oriented to time, person, and place. Speech was normal. Cranial nerves II-XII were intact. Memory: She was able to tell the date and current president's name. Babinski's was negative. Romberg test was negative. Finger-to-nose test was normal. DTRs were bilaterally symmetrical and 2+. The muscle power was 5/5 in all extremities. Pain and touch were intact bilaterally symmetrical and equal. The claimant could on and off the chair without any assistance. The impression was

chronic neck pain, back pain, and pain between the shoulder blades. Rule out bursitis or depression. (pp. 22-23)

Claimant testified on the record that she is single with no children under 18 and lives with her uncle. Claimant does have a driver's license and does drive but has no vehicle. Claimant testified that she does cook 2 times per week and cooks things like steak, soup, or tuna casserole. Claimant testified that she grocery shops one time per month and needs help carrying bags and usually her boyfriend helps. Claimant testified that she does do dishes, sweep the floor, and do laundry. Claimant testified that her hobby is arts and crafts. Claimant testified that she can walk a block and sometimes walk 4-5 blocks on a good day. Claimant testified she can stand for 15-20 minutes and sit for 2 hours at a time. Claimant is able to shower and dress herself and usually bathes. She is able to squat, bend at the waist, and tie her shoes but not touch her toes. The heaviest weight claimant testified she can carry is 8-10 pounds and she is right-handed and she stated that her hands and shoulders hurt and her wrists are weak. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 11 and with medication is a 9. Claimant testified that she does smoke a half a pack per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant testified that in a typical day she takes 2 hours to move about and then gets breakfast, makes lunch, straightens things up and takes care of the cat the dog, she lies down in the afternoon and then makes a meal and watches television.

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. 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 or mental impairment. There is no physical or mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental or physical impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the 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 sedentary, light work. Claimant worked as a home healthcare giver but she also worked as a travel agent for 19 years. As a travel agent position does not require strenuous physical exertion, 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. 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 has failed to provide the necessary objective medical evidence to establish that she has a severe impairment of combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

It should be noted for the record 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: February 2, 2010

Date Mailed: February 2, 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.

2009-30333/LYL

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:

