

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: 2009-30336
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 27, 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 March 2, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 14, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On May 28, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On June 8, 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 (SHRT) also denied claimant's application stating she was capable of performing other work, namely light unskilled work per Vocational Rule 201.17.

(6) Claimant submitted additional medical evidence following the hearing which was forwarded to SHRT for review. On November 19, 2009 SHRT once again determined that the claimant was not disabled as she was capable of performing other work.

(7) Claimant is a 50 year old woman whose birth date is [REDACTED]. Claimant is 5'0" tall and weighs 200 pounds. Claimant has a bachelor's degree in psychology and can read, write and do basic math

(8) Claimant states that she last worked in [REDACTED] restaurant as a cashier for 6 months, until she was fired for having cash shortages. Claimant also worked at [REDACTED] for a year from [REDACTED], job she quit due to personal problems with a manager, and at [REDACTED] again from [REDACTED] where she was fired due to the new manager not liking her sexual orientation.

(9) Claimant currently lives with 3 roommates, and was receiving SDA due to being [REDACTED] client, but her case there is now closed and she is no longer SDA eligible. Claimant also receives food stamps.

(10) Claimant does not have a driver's license as it was suspended due to her driving with expired plates. Claimant does some house cleaning, prepares simple meals and goes to the grocery store once per month with friends.

(11) Claimant alleges as disabling impairments diabetes mellitus, cervical spondylosis, lumbosacral spondylolisthesis, hypertension, chronic obstructive pulmonary disease, arthritis, fibromyalgia, high cholesterol, borderline low blood sugar, clinical depression and panic/anxiety disorder.

(12) Claimant has applied for Social Security disability in March, 2009 and that decision is pending.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

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 does 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 testified that she has not worked since February, 2009. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record consists of a June 26, 2007 physical examination report performed for MRS. Claimant’s diagnosis was cervical and lumbar spondylosis, congenital abnormality in the cervical spine, significant spondylolisthesis at the lumbosacral junction, and history of fibromyalgia. Doctor’s opinion was that the claimant is not totally disabled, and that, based on the examination, she is capable of employment with restrictions to avoid lifting weights greater than 20 pounds, avoid repetitive overhead activity or cervical extension, and avoid lifting weights with the upper extremities to 10 pounds or less. Claimant was also to avoid prolonged standing, walking, as well as climbing. These restrictions would be permanent in doctor’s opinion.

Medical Examination Report for an exam of March 11, 2009 indicates that the claimant had not been seen since 2007. Claimant's current diagnosis uncontrolled hypertension, type 2 diabetes mellitus, and depression. Claimant can lift/carry less than 10 lbs. frequently and up to 20 lbs. occasionally. Claimant can stand/walk at least 2 hours and sit about 6 hours in an 8-hour workday. Claimant can use her hands and arms for all repetitive actions, and can operate foot/leg controls with both legs. Claimant does not have any mental limitations.

Internal medicine evaluation of April 20, 2009 indicates as claimant's chief complaint arthritis and fibromyalgia, and as past medical history hypertension, hypercholesterolemia and gastroesophageal reflux disease. Claimant reported smoking one pack of cigarettes per day. Claimant was well-developed, well nourished, alert, oriented, cooperative and in no acute distress. She got on and off the examining table without assistance, but was using a cane and limping slightly to the right. Claimant was 5' tall and weighed 190 lbs., and her blood pressure was 132/80. Claimant had decreased air entry bilaterally with occasional wheeze and rhonci in her lungs. Claimant had normal peripheral pulses with trace edema, and she was grossly intact neurologically. Clinical impression was that of degenerative joint disease, chronic, more severe in the knees at the present time, mainly right, hypertension, consideration of COPD, hyperlipidemia, and possible bipolar affective disorder. It was noted that in regards to employability, if the claimant is cleared by the psychiatrist, she might be able to do light duty for a few hours a day.

Medical Examination Report for an exam of August 25, 2009 indicates as claimant's current diagnosis COPD, congenital Klippel-Feil abnormality in cervical spine, HTN and dyslipidemia. Claimant's weight is 220 lbs. and her blood pressure at 134/92. It is noted that the claimant's physical condition is stable but that she is limited to lifting/carrying less than 10 lbs.

frequently and 10 lbs. occasionally, that she can stand/walk less than 2 hours and sit less than 6 hours in an 8-hour workday. Claimant can use her hands/arms for repetitive actions and also use her both of her feet/legs for operating foot/leg controls. Claimant can also meet her needs in the home without assistance.

Psychological/Psychiatric Medical Report of July 22, 2009 quotes the claimant as listing her medical problems and that she had been diagnosed with clinical depression in the 90's. Claimant also reported recently (since being unemployed) experiencing fear of death at nighttime and difficulty falling asleep, and believes this is due to her soon being 50 and her partner dying at the age of 51. Claimant reported no alcohol or drug abuse, that she lives alone with her two dogs but the house she lives in is in foreclosure. Claimant was casually dressed and maintained eye contact throughout the evaluation. Claimant's gait was slow and appeared unbalanced. She arrived on time and alone being driven to the appointment by [REDACTED].

Claimant presented with intact reality and average self esteem. She frequently stood up during the evaluation due to pain in her legs. Rapport was easily established, claimant remained cooperative, she did not appear to exaggerate or minimize her symptoms, and she had fair insight into her difficulties relating current mood to chronic health problems. Claimant's stream of mental activity was spontaneous and organized, and she denied any history of hallucinations or any other thought disorders. Claimant also denied any past suicide attempts or any current suicidal ideations. Claimant's affect was appropriate, but she stated she was depressed since not working and reported a harder time sleeping. Claimant was oriented x 3. After testing claimant's memory, information capacity, calculation, abstract thinking, similarities and differences and judgment, conclusion is that the claimant is able to understand, remember and complete simple and multi-step tasks. Due to increased fatigue and depressed mood tasks may

be completed in a less efficient manner than her peers. Interactions with others should be appropriate. At this time it appears that claimant's current health problems are more of a deficit than her current emotional symptoms. Claimant's diagnosis is that of adjustment disorder with depressed mood, with a GAF of 58.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant's impairments have lasted 12 months or more. This Administrative Law Judge finds that claimant has met her burden of proof at Step 2, and analysis continues.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge would have to deny the claimant based upon her ability to perform past relevant work. Claimant's past relevant work was as a cashier, job she was fired from in February, 2009 for cash shortages, not because she could not perform the job due to medical reasons. Claimant had also worked in fast food restaurants for a number of years and these jobs also ended due claimant either quitting because she was not happy with the pay or due to personal problems with managers. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability 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 other 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do sedentary and light work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that he cannot perform sedentary and light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (age 50), with high school education or more (claimant has a bachelors degree in psychology) and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

In conclusion, although the claimant has cited medical problems and presented evidence to show she indeed has such problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 19, 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.

cc:

