

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: 2009-31773

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 13, 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 October 13, 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 April 21, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 25, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 17, 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) pursuant to Medical-Vocational Rule 202.17.

(6) The hearing was held on October 13, 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 December 3, 2009.

(8) On December 9, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: As there is no significant change in the evidence presented to this point, the prior findings are upheld. It is determined that claimant is capable of performing light exertional tasks. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile of 32 years old, less than a high school education and a history of unskilled work, MA-P and retroactive MA-P are denied using Vocational Rule 202.17 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.04, 3.03, and 5.01 were considered in this determination.

(9) Claimant is a 32-year-old woman whose birth date is [REDACTED] Claimant is 4' 11" tall and weighs 242 pounds. Claimant attended the 9th grade and has no GED. Claimant was in special education for reading. Claimant testified she is able to read and write and does have basic math skills.

(10) Claimant last worked in 2007 as a grocery store cashier. Claimant has also worked in a restaurant and at a temp service in a parts factory.

(11) Claimant alleges as disabling impairments: degenerative disc disease, gastroesophageal reflux disease, asthma, herniated disc, depression, arthritis, neck pain, ulcers, skin patches, tension headaches, and pain all over her body.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a radiology examination report of [REDACTED] shows an MRI study of the cervical spine. The impression was right paracentral disc herniation at C3-C4 effacing the right aspect of the cord anteriorly. No spinal cord signal abnormality. There was a broad disc spur at C4-C5 effacing the cord anteriorly. No associated spinal cord signal abnormality. There was also a broad small right paracentral disc spur at C5-C6 effacing the right aspect of the cord anteriorly. There was mild to moderate foraminal stenosis bilaterally at C4-C5 due to facet and uncovertebral hypertrophic arthropathy. (New Information)

A Medical Examination Report dated [REDACTED] indicates that the clinical impression was that claimant was deteriorating and that she could occasionally lift or carry less than 10 pounds, but never carry 10 pounds or more and that she could stand or walk less than 2 hours in an 8-hour workday and sit less than 6 hours in an 8-hour workday. Claimant could use her upper extremities for repetitive actions such as simple grasping and fine manipulating, but not for reaching, pushing/pulling, and she could operate foot and leg controls with both feet and legs. She was diagnosed with a cervical lumbar herniated disc and depression. She had some mental limitations in the form of sustained concentration and social interaction. Her weight was 229 pounds and her blood pressure was 120/80 and she was right-hand dominant. (pp. 11-12)

A physical examination of [REDACTED] indicates that the claimant was alert and oriented x3. Her height was described as 5'11" and weight was 227 pounds. Blood pressure was 110/60. Visual acuity was 20/20 for the right eye and 20/20 for the left eye. Both eyes were 20/20 without glasses. HEENT: Her 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. In the chest, the lungs were clear to auscultation bilaterally. In the cardiovascular area, S1 and S2 were regular. There was no murmur or gallop noted. PMI was not displaced. In the abdomen, the abdomen was obese, soft, and non-tender. No masses were felt. Bowel sounds were normal. There was no organomegaly. In the musculoskeletal area, the range of motion of the C-spine was full. The range of motion of the thoracolumbar spine forward flexion was 0-50, extension was 0-10. Bilateral lateral flexion was 0-20. No SI joint tenderness. There was no midline spine tenderness. Bilateral knees, hips, and ankles 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 noted. There was no skin lesions noted on the forearms or the face. In the neurological area, she was alert and oriented to time, person, and place. Speech was normal. Cranial nerves II-XII were intact. Her memory, she was able to tell her birth date and current president's name. Babinski's was negative. Romberg test was negative. Finger-to-nose test was normal. DRT's were bilaterally symmetrical and 2+. Muscle power was 5/5 in all extremities. Pain and touch were intact bilaterally symmetrical and equal. The claimant could get on and off of the table and chair without any assistance. The impression was obesity, chronic back pain due to degenerative arthritis, bilateral knee pain (rule out degenerative joint disease), gastroesophageal reflux disease, asthma, history of sinusitis, and seborrheic dermatitis.

(pp. 39-40)

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 no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings which establish that claimant has a severe impairment. Although claimant does have some problems with her neck, there is no support given for the extreme physical limitations listed on the Medical Examination Report which indicates that claimant cannot ever lift 10 pounds or more. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant does have some pain in her neck. 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, Medical Examination Report, 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 that claimant has a severely restrictive physical impairment or combination of impairments.

There is insufficient objective medical/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).

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. In addition, 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. This Administrative Law Judge finds that the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental 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 light work as a cashier. This Administrative Law Judge finds that a cashier position does not require strenuous physical exertion and that 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 testified on the record that she does have a driver's license and she drives to the doctor and to the Department of Human Services and picks up her prescriptions 3 times a week and she usually drives about a half an hour drive to the Department of Human Services. Claimant testified that she does cook and makes mostly microwave meals or boils things. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Claimant did testify that she is able to do dishes and laundry and that she can walk one to one and half blocks on a good day, stand for 15 minutes and sit for 30 minutes to an hour. Claimant is able to squat, bend at the waist, tie her shoes, shower and dress herself, and barely touch her toes. Claimant testified she does have pain in her knees. Claimant stated that she is right-handed and she has pain in her arms and her level of pain on a scale from 1 to 10 without medication at an 11/12 and with medication is a 7/8. Claimant stated that in a typical day she gets up and takes her medications and lies down and goes to sleep for a few hours, then washes up, lies down some more, then eats, and is usually in bed watching television or sleeping.

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. Under the Medical-Vocational guidelines, a younger individual (age 32), 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, 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 8, 2010

Date Mailed: February 8, 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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