

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: 2009-31778
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 8, 2009
Bay 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 8, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

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 December 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 26, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 31, 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 19, 2009, the State Hearing Review Team again denied claimant's application stating that in its analysis and recommendation: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of light unskilled work. The claimant's impairments do not meet/equal the intent or severity of the Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and unskilled work history, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because of nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on October 8, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) After several requests for extensions of time for the presentation of new information, claimant's authorized representative on January 12, 2010, mailed a letter to Administrative Law Judge Lain stating that they were unable to obtain a DHS 49(D+E) from the claimant's treating psychiatrist.

(8) The record was closed on February 22, 2010, and this Administrative Law Judge proceeded to decision.

(9) Claimant is a 29-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 340 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked March 2008 at [REDACTED] on the assembly line. Claimant has also worked as a retailer at the [REDACTED], cleaning the store, cashier and helping customers and also has worked in insurance sales and phone sales.

(11) Claimant alleges as disabling impairments: degenerative disc disease, panic attacks, morbid obesity, herniated disc, bipolar disorder, migraines, back pain and spasms, spinal stenosis, panic attacks, anxiety disorder, and migraines.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2008.

The objective medical evidence on the record indicates that claimant is status post laminectomy surgery on [REDACTED]. An MRI of the cervical spine showed mild disc space narrowing at C6-C7 with moderate left paracentral protrusion. (pp. 91-92) An x-ray of the lumbar spine showed mild anterolisthesis of the L2 and moderate narrowing of the L5-S1 (p. 98). Claimant was morbidly obese weighing 324 pounds and 5'7" tall. (p. 82) Neurological examination was unremarkable. (p. 99) The electromyogram dated June 24, 2009 showed evidence of slight movement (pp. 95-96). In her mental status the claimant was oriented times three. Her mood and affect were normal. Her attention span was normal. (p. 99)

A Medical Examination Report contained in the file dated [REDACTED] indicates the claimant was normal in all areas of the examination except that she had some range of motion problems and weakness in her left extremity. She is 5'7", 324 pounds and her blood pressure was 140/70 and she was right-hand dominant. The clinical impression: claimant was deteriorating, and that she could occasionally lift 20 pounds, frequently lift 10 pounds and never lift 25 pounds or more. Claimant can stand or walk about 6 hours during an 8-hour day and assistive devices were not medically required or needed for ambulation. Claimant was able to use her upper extremities for simple grasping, reaching and fine manipulating and could operate foot and leg controls with both feet and legs. Claimant only had some limits in her social interaction based upon panic and anxiety (pp. 81-82).

A [REDACTED] Medical Examination Report from a neurosurgeon indicates that her blood pressure was 104/60, pulse was 70 and respirations were 18. Her general appearance not well maintained. Mood and affect was normal. She was oriented times three. Attention span

was normal. She did not have any language dysfunction. She was morbidly obese. Neurological examination was otherwise unremarkable. (p. 99) A radiology consultation of [REDACTED] indicates she had degenerative disc disease at L5-S1, left facet arthropathy at L5-S1, increased MDP posterior bilaterally at the level of T12-L1, L1-L2, L2-L3 and L3-L4 likely postoperative in nature. (p. 97)

An EMG dated [REDACTED] showed evidence of slight improvement. Claimant had markedly increase in reflexes with Hoffmann being positive and upgoing plantar. The neurologist indicated the treatment for chronic back pain would be a thorough rehab which will require physical therapy, exercise, weight reduction and muscle strengthening. (p. 94) An MRI of the spine date [REDACTED] indicates that there is mild straightening of the normal cervical lordosis. There is no fracture or subluxation noted. There is a mild disc space narrowing at C6-C7. At C4-C5 there is mild bulging of the disc with no herniation, canal stenosis or nerve root impingement. At C6-C7 there is a moderate-sized left paracentral protrusion with impression upon the ventral thecal sac and abutment of the cord. There is moderate narrowing of the left neural foramen as well. There is no abdominal signal within the cord however. The remaining levels appear within normal limits. (p. 91)

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. The Administrative Law Judge cannot give weight to the treating physician's DHS-49, Medical Examination Report, as it

is internally inconsistent. The DHS-49 indicates that the claimant can lift 20 pounds and can stand or walk 6 in an 8-hour day and that she has no real physical limitations, yet, the clinical impression is that claimant is deteriorating; however, there is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant testified on the record that she has a panic attack approximately once every two weeks and there is no particular trigger. Her GAF is determined to be 65. (p. 32) 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.

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).

In the mental status examination claimant appeared to be her stated age. Her speech was spontaneous and coherent. Her mood was anxious and mildly depressed. She did not show any florid psychotic symptoms. She had not evidence of delusions or hallucinations. Her cognitive functions were intact. She was oriented to time, person and place. There was no impairment of her short term or long term memory. She denied any suicidal or homicidal ideation. (p. 32) 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 or sedentary. As an insurance sales person, sales person over the phone, a scrapbook retail peddler and cashier positions 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.

Claimant's complaints of pain, were profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimants ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish a claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 29), with a 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. BEM, 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 established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: March 29, 2010

Date Mailed: March 29, 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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