

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: 2009-31788
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2009
Monroe 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 September 9, 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 retro MA?

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 February 13, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On June 4, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 18, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 9, 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 the claimant was capable of performing other work, namely unskilled medium work per Vocational Rule 302.25.

(6) Claimant is a 24 year-old woman who is 4'11" tall and weighs 185 lbs. Claimant quit school in 9th grade due to family problems and has no GED. Claimant can read and write "a little", and can do some basic math.

(7) Claimant states that she last worked in April, 2008 for department store chain as a cashier and stocking, job she held since August, 2007 and that ended when the store closed down. Claimant states she was hurt at work in September, 2007 and was off work for 3 weeks, then on restrictions. Claimant has also worked for 7 months at [REDACTED] in 2005.

(8) Claimant feels she could work in a stocking position or bagging groceries, but she has been turned down for such jobs due to not having a high school diploma or a GED. Claimant lives with her parents that support her.

(9) Claimant alleges as disabling impairments diabetes for which she takes pills and short, Hepatitis C resulting from a one time intravenous heroin use in June, 2006 when a friend gave her the drug and she overdosed on it, and bipolar disorder.

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).

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

At Step 2, claimant has the burden of proof of establishing that he 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 includes a Medical Examination Report for exam of [REDACTED], completed by a Physician Assistant (PA). All of claimant’s examination areas are listed as normal except for obesity and fatigue. Claimant’s condition is listed as deteriorating but no physical limitations are listed. Claimant has mental limitations in the areas of comprehension, memory, sustained concentration, following simple directions, reading/writing and social interaction. Claimant can meet her needs in the home without assistance. Same PA completed a Medical Needs forms stating that the claimant can work at any job but with limitations per evaluation with MRS or with occupational therapist.

PA note of [REDACTED], indicates that the claimant came in on this date but has not been seen since the end of January nor has she been calling with her sugar readings. Claimant was told she should continue to see a dietician for her diabetes.

[REDACTED], note from a Psychology Intern quotes the claimant as saying her fiancé's daughter was killed on [REDACTED], they are both upset about it, but have agreed to name their daughter after her. It is noted that the claimant has made very few attempts to improve her social support system, and states this is because she does not want to fall back into drugs and drinking.

[REDACTED] exam report of [REDACTED], states that the claimant was diagnosed with type 2 diabetes mellitus in 2001, which she gave a history of bipolar disorder for which she is on Seroquel, and also gave a history of ADD, diagnosed as a child. Claimant also reported that while working at [REDACTED], boxes fell on her and she hurt her back, and has pain when she walks a lot for about four to five hours of activity, but otherwise has no pain.

Physical examination was normal. Claimant was 4'11", weighed 187 pounds, and had blood pressure of 128/82. Examination of the back does not reveal any tenderness of the lumbosacral spine, range of motion is normal at the lumbar spine, and straight leg raising test is negative bilaterally. Claimant is alert and oriented times three. Impression is that of type 2 diabetes mellitus requiring insulin and Metformin, not well controlled, bipolar disorder and ADD, and history of back pain when the claimant is on her feet for 4-5 hours but not related to any other activity.

Medical Examination Report by the same doctor of [REDACTED] states that the claimant is able to follow directions, and that she has no physical limitations.

[REDACTED], psychological exam from [REDACTED] quotes the claimant as saying she has been in outpatient therapy for the last several years and took Ritalin as a child for

ADHD. Claimant complains of having sudden mood swings and admits to having problems controlling her anger and upset. Claimant stated she was arrested once a year ago after she pushed an ex-boyfriend and spent four hours in jail. Claimant had never had any inpatient psychiatric treatment and denied symptoms of major depression, suicidal ideation or disturbance of thought. Claimant reported living with her parents in their home, visiting her fiancé daily although he is currently on house arrest with charges of fighting, performs daily chores, does her own injections of insulin and maintains good grooming. Claimant does not need any assistance or prompting with dressing and showering and has not yet learned to drive. She can prepare her own meals, denies any disturbance of sleep or appetite, and in her free time likes coloring, playing video games and watching movies.

Mental Status Exam indicates that the claimant arrived on time but was dressed in a pair of pajama bottoms and a t-shirt she had slept in, as she stated she had to take care of a sick cousin the night before. Claimant was otherwise neat and clean in her appearance, her speech was clear, and her gait and posture was normal. Claimant was cooperative, friendly and polite, and there was no suggestion of malingering or exaggeration of her symptoms. Claimant's future goals were to get her GED and find full time employment. Claimant did deny history of drug or alcohol abuse, which was apparently not true, as claimant stated during the hearing that she did use alcohol, marijuana and cocaine in the past, and that she also used heroine which she claims was only once.

Claimant's performance on the WAIS-III places her in the borderline range of intellectual functioning with 4th grade reading recognition skills, and her vocabulary and verbal comprehension abilities are consistent with this grade reading ability. Claimant's arithmetic skills are limited to single digit addition and subtraction.

Diagnosis is that of learning impairment, bipolar disorder by history managed by medication, ADHD by history with no current symptoms, and a GAF of 55. Claimant's prognosis is fair to guard but she can manage her own funds.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does have diabetes but it is apparent from the notes of her own PA that she was not in compliance with either the diet or with checking her blood sugar and taking medications on a regular schedule. Independent medical examiner does not find that the claimant suffers from any physical impairment that would rise to the level of being severely restrictive. Claimant has provided no medical information about her Hepatitis C to show any type of impairment arising from this condition. Claimant's hearing testimony is that she walks around Toledo area and to the mall, which is about 3-4 hour walk, and that if she is on her feet for more than 5 hours her feet and back hurt. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about her physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation. Claimant's alleged bipolar disorder is not documented by any history of psychiatric or psychological treatment in the past, and is cited as one of her diagnoses based on her own reporting. Claimant does appear to have a learning disability on the reading, writing and math tests, however her poor performance could be caused by the fact that she dropped out of school in the 9th grade. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his 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 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was doing as a cashier, stocking, and working at McDonalds. Claimant herself states that she could perform simple labor jobs similar to the ones she has had in the past. 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 even heavy 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 she

cannot perform sedentary, light and medium work, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 24), with limited education and an unskilled work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.24. Claimant is capable of performing more than sedentary work.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical 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.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of sedentary, light and medium 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: November 3, 2009

Date Mailed: November 5, 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.

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