

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: 2009-31902  
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 March 19, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 25, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional and that claimant could perform other work.

(3) On June 30, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 7, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 20, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's diabetes and blood pressure are currently well controlled. She is depressed and anxious but there is no evidence of a formal thought disorder. The claimant is capable of simple, unskilled, medium work. 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 unskilled, medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 12<sup>th</sup> grade education and a history of unskilled work, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied. 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.

(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 October 14, 2009.

(8) On October 15, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.29. The State Hearing Review Team stated that claimant is restricted in working around unprotected heights or dangerous machinery and that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work, a denial to other work will be used.

(9) Claimant is a 45-year-old woman whose birth date is [REDACTED] Claimant is 5' 3" 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 as a medical assistant in assisted living in 2001. Claimant has been married since 2001 and had health insurance through her husband's work, but is currently separated and lives alone in a flat and is supported by a friend.

(11) Claimant alleges as disabling impairments: bipolar disorder, diabetes mellitus, heart disease, a blocked artery, cardio obstructive pulmonary disease, hypertension, and depression.

#### 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 2001. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report of [REDACTED] indicates that claimant is normal in all areas of examination except that she has diabetic neuropathy and a bipolar disease. The clinical impression is that claimant was deteriorating and that she could frequently lift less than ten pounds and never lift ten pounds or more and that she could stand or walk about six hours in an eight-hour workday and sit about six hours in an eight-hour workday. Claimant did not need assistive devices for ambulation and she could do simple grasping, reaching, pushing/pulling, and fine manipulating with both of her upper extremities but not operate foot or leg controls with either foot or leg. Claimant had some mental limitations in the form of sustained concentration and social interaction. (pp. 16-17)

A [REDACTED] examination indicates that claimant was a female, age 44, height 5' 2" tall, weighed 129 pounds, blood pressure 120/80, temperature 98 degrees

Fahrenheit, pulse 76 per minute and regular, respiration 16 per minute and regular. HEENT: Sclera, PERRLA normal. No nystagmus. Fundi were normal. Ears clear. She has loss of severe teeth and filling of a few teeth. The neck was supple. Thyroid was not enlarged. No lymphadenopathy. Jugular venous pressure was normal. Carotid arterial pulsations were normal. No carotid bruit. Her clear was clear to percussion and auscultation. CVS: PMI was normal in position and character. Heart sounds were normal. No murmur. No gallop rhythm. Abdomen was soft with no organomegaly or tenderness. Bowel sounds were normal. Skin had no rash or pigmentation. No ulceration or gangrene. The extremities had no cyanosis, clubbing, edema, or lymphadenopathy. No calf muscle tenderness. Homan's sign was negative. Peripheral pulsations were 1+ all over the lower extremities. SPINE: Claimant could stand erect without support. No loss of lumbar lordosis. There was no tenderness or paraspinal muscle spasm. All movements of the lumbar spine were of normal range and pain free. Straight leg raising test was 90 degrees on both sides and pain free. In the bones and joints she had pain and burning in both feet. She had crepitus in the right knee joint. There was no pain, swelling, limitation of movements or crepitus in any other joints. Grip was good in both hands (5/5) tested manually. Muscle power was good in all the extremities. There was no wasting of muscles around the joints. Gait and stance were normal. The claimant could walk tiptoe, tandem gait, or on the heel, and can squat and get up, but complained of pain in her legs. She could get on and off the examination couch from the supine position. The claimant could dress, undress, and write legibly. Nervous System: Higher Function: She was oriented to time, place, and person. Speech was normal. Memory was fairly good. The claimant could remember day, date, month, year, and names of the Presidents. Cranial nerves II-XII were normal. Power, tone, and sensations were normal. Deep tendon reflexes were



2+ and equal bilaterally. Plantars were flexor bilaterally. Romberg sign was negative. Cerebellar functions were normal. Gait was normal. (pp. 9-10)

A Mental Status Examination in [REDACTED] showed the claimant was spontaneous, slow, circumstantial, and organized. There was no pressure of speech. She denied psychotic symptoms. She was depressed, anxious, and nervous. Affect was blunted. (p. 5) Diagnosis included bipolar disorder and anxiety disorder. (p. 6) Claimant had a current GAF of 60 and her prognosis was fair and she would be able to manage her own funds. (p. 6)

A [REDACTED] examination dated [REDACTED] indicates that claimant drove herself to the office. Her height was 63" and her weight was 125 pounds. Posture and gait were within normal limits. She had no difficulty remembering her appointments. She cleans, cooks, and for the last 14 years she has cared for her mother who had Alzheimer's disease. The mother died in [REDACTED]. She was able to take care of her basic needs. She drives and has a boyfriend. She was in contact with reality. When asked about self-esteem she said I have a lot of it. She is motivated, but cannot finish things. She was initially irritable because she had gotten lost but during most of the interview she was pleasant, friendly, and seemed to have good insight into her illness too. She was very spontaneous and spoke at a pressured rate of speed. She did not show any kind of tangentiality or flight of ideas, or any other formal thought disturbances. She denied hallucinations, delusions, or other psychotic symptoms. She sleeps very well now and has a good appetite. She does not feel worthless except for sometimes and has no suicidal ideation. Her affect was full range. Her psychomotor activity was increased. She said has been mildly anxious most of her life but came across in a mild hypomanic state. Recently she had been in depression but now feels in a hypomanic state. She was oriented x3. She had no difficulty repeating six digits forward. She was able to remember

three objects with their adjectives after two minutes. Her remote memory was fine. For large cities she named Baltimore, Philadelphia, Atlanta, Detroit, and Cleveland. Calculations:  $7 \times 6 = 42$ . Adding was fine. Abstract Thinking: Don't cry over spilled milk, the claimant said don't get upset over small things. Similarities and differences were not applicable. Judgment: If there was a fire in a theater, the claimant would look for an exit sign and go out of the building. She was diagnosed with bipolar disorder, type II with a GAF around 50 and she would be able to manage her own benefit funds.

Claimant testified on the record that she does have a driver's license and that she does drive two times per week but has no car and she usually gets a ride from people. Claimant testified that she does cook one time per day and cooks things like hotdogs, fries, and cheeseburgers. Claimant testified that she does grocery shop one to two times per month and usually needs help carrying groceries and her friend helps her. Claimant testified that she cleans her home and does dusting, laundry, dishes, and cleans the bathroom. Claimant testified that as hobbies she reads, cross stitches, and does jigsaw puzzles. Claimant stated that she can walk twenty feet, stand for five minutes, and sit for thirty minutes at a time. Claimant testified that she can shower and dress herself, tie her shoes and touch her toes, but not squat. Claimant is able to bend at the waist. Claimant testified that the heaviest weight she can carry is ten pounds and that she is right-handed and that she has carpal tunnel syndrome, bursitis, and diabetic neuropathy. Claimant testified that her level of pain on a scale from one to ten without medication is beyond a ten and with medication is a nine. Claimant testified that she does smoke a pack of cigarettes 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 watches television five hours a day and sleeps and gets up and takes her medication.

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. This Administrative Law Judge cannot give weight to the treating physician's DHS-49, Medical Examination Report, because it is internally inconsistent. The 49 indicates that the examination areas are normal with the exception of diabetic neuropathy and bipolar disorder and does not give claimant any physical limitations in her ability to stand, walk, or sit in an eight-hour workday, but does state that she can frequently lift ten pounds, but never more than ten pounds and that the clinical impression is she is deteriorating but she can use her upper extremities for all activities. There are no laboratory or x-ray findings listed in the DHS-49. There is insufficient objective medical evidence to support the extreme physical limitations listed on the 2<sup>nd</sup> page which indicates that claimant can only lift ten pounds but cannot use her legs and feet for any actions. Claimant does not need assistive devices for walking and can stand, sit or walk up to six hours in an eight-hour day. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant experiences diabetic neuropathy. 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 has restricted claimant from tasks associated with occupational functioning based upon the 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.

Claimant did testify that she is depressed and has a bipolar disorder.

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 in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There are two mental assessments in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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 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. According the medical documents, claimant did care for her elderly mother who had Alzheimer's [REDACTED] when her mother passed away. Claimant's past relevant work was as a

medical assistant/home healthcare aid. Therefore, claimant's past relevant work was medium work. There is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work 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. In addition, claimant testified on the record that she does continue to smoke a pack of cigarettes per day despite the fact that her doctor has told her to quit and she is not in smoking cessation program. Claimant is not in compliance with her treatment program.

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. There is also no evidence of depression or a cognitive dysfunction that is so severe that it would prevent claimant

from working at any job. Claimant did testify that she was depressed because her mother died and her dog died. Therefore, claimant's depression would be considered situational and there is no evidence of clinical depression in this file. The 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 45), 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. 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. However, this Administrative Law Judge does determine that the Adult Medical Program had an open enrollment period in March 2009. The department should consider whether or not claimant is eligible to receive the Adult Medical Program if it has not already done so.

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

Date Signed: January 6, 2010

Date Mailed: January 7, 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

cc:

