

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: 2009-33445

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 22, 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 22, 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 May 28, 2009, claimant filed an application for Medical Assistance, State Disability Assistance, and retroactive Medical Assistance benefits alleging disability.

(2) On July 7, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On July 13, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 2, 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) Claimant is a 43-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4-1/2" tall and weighs 198 pounds. Claimant recently lost 23 pounds. Claimant attended the 11th grade and does have a GED and 1-1/2 years of college where she studied criminal justice. Claimant also attended vocational school where she became a commercial driver and does have a commercial driver's license.

(7) Claimant is able to read and write and does have basic math skills and is currently employed at [REDACTED] 24 hours per week earning \$9 an hour as an inspector of auto parts. Claimant has also worked as a caregiver, as a truck driver, and as a store manager for [REDACTED]

(8) Claimant alleges as disabling impairments: hypertension, depression, bipolar disorder, and breathing problems. Claimant testified on the record that she doesn't have any physical impairment, but she doesn't want to be bothered and she feels like she should be confined to work and she misses a lot of work. Claimant testified that she does have chest pains often, 2-3 times per day, which last for a couple of minutes.

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 engaged in substantial gainful activity. Claimant does work 24 hours per week earning \$9 per hour which means that she earns approximately [REDACTED] per week or [REDACTED] per month in gross income. Claimant is disqualified from receiving disability at Step 1.

The objective medical evidence contained in the file indicates that an [REDACTED] medical report indicates that claimant was seen in the emergency room with generalized peritonitis and was brought to the operating room and there was found a loop stuck in the pelvis

that ended up noting a toothpick which pierced the bowel. Because of the inflammation, there was a small bowel resection using a GIA stapling device with 3.5 mm staples. The claimant was sent to recovery in stable condition. (p. 9)

A [REDACTED] mammogram indicated claimant had a benign mammogram and the breasts contained fatty and fibroglandular tissue. It was distributed in a symmetrical fashion. A dominant mass was not identified. There was an intramammary lymph node on the right. There were lymph nodes in the axillae which were fatty, replaced.

On [REDACTED], claimant's vital signs flow sheet indicated that claimant was 222 pounds and was 5' 4" tall. Her blood pressure was 112/80, temperature was 97.2, her pulse was 70, and her respiratory rate was 16.

A [REDACTED] mental status examination indicated that claimant demonstrated good grooming, timeliness, orientation x4, sadness, irritable behavior, fidgetiness, anxious appearance, good eye contact, normal speech, intact judgment, logical and coherent thought process, non-command auditory hallucinations, no delusional thought, no obsessive or compulsive thought, below average intelligence, and fair insight. After careful assessment of self-harm risk, the claimant was determined to have no current suicidal thoughts, intent, or plan. Regarding thoughts of harm toward others, there were no homicidal thoughts, plans, or intent. The claimant was receptive to advice and the assessment was major depressive disorder and a GAF of 54. She was encouraged to comply with her medication and was encouraged to seek therapy and was instructed to return in one month. Claimant has a substance abuse history which includes the use of crack cocaine and alcohol.

Claimant testified on the record that she does support herself with her job and that she lives alone in an apartment and she is single with no children under 18 who live with her. Claimant does have a driver's license and drives two times per week when she uses her mom's car. Claimant does cook things in the microwave and grocery shops bi-weekly and usually has help from her mother picking out nutritious foods. Claimant testified that she does clean her home by sweeping, mopping, dusting, doing laundry and dishes. Claimant testified that she has no limits on her ability to walk. Claimant can stand for an hour at a time and sit for an hour at a time. Her knees are fine and her back does hurt with constant lifting at work, but she doesn't have any real problems with her back. Claimant can shower and dress herself and can squat but usually holds on to things to get up. Claimant can bend at the waist and tie her shoes as well as touch her toes. Claimant can carry 20-25 pounds and is right-handed and stated that her hands do hurt or cramp sometimes but her legs and feet are fine even though her feet do hurt after she works all day. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 6 and she doesn't take any pain medication. Claimant testified that she does smoke a half 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 she used to drink about a fifth of gin a day but quit in July 2006 and that she used to smoke crack but also quit that in July 2006.

Claimant testified that in a typical day she gets up and has breakfast and then goes to bed and then she gets up and fixes lunch and goes back to bed. Claimant testified that she works 3-4 days a week and that some days she works 4 hours and some days she works 12 hours. Claimant testified that she feels like she has some mental health problems and her mother has suggested that she see a therapist because she doesn't have any enthusiasm to do anything and sometimes the medications help but sometimes they make her sleep more. Claimant's witness testified that

claimant has a major depressive disorder, recurrent and severe, and does sometimes have auditory hallucinations but doesn't have them now and that she has poor concentration.

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. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. Claimant is able to hold down a part-time job and does live alone and is able to perform her activities of daily living without assistance. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical or mental impairment. 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 does currently work approximately 20-24 hours per week. There is no medical

evidence upon which this Administrative Law Judge could base a finding that claimant is unable to continue 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has properly denied claimant's application for disability-based Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefits. The claimant is disqualified from receiving disability at Step 1, Step 2, Step 3, and Step 4.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: November 25, 2009

Date Mailed: November 30, 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.

2009-33445/LYL

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:

