

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: 2009-33479
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 2009
Kent 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 October 7, 2009. Claimant personally appeared and testified. Claimant was represented 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 30, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 7, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work. This decision was previously deferred so DHS could obtain a psychiatric exam for the claimant.

(3) On June 9, 2009 the department caseworker sent claimant notice that her application was denied, being under mistaken impression that the claimant had not reported for the scheduled psychiatric exam. Claimant had indeed done so but the exam was not forwarded to DHS by the examiner.

(4) On June 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 10, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the medical evidence of record indicates the claimant retains the capacity to perform a wide range of unskilled, light work, and cited Vocational Rule 202.17 as a guide.

(6) Claimant submitted additional medical evidence following the hearing which was forwarded to SHRT for review. On January 6, 2010 SHRT again denied claimant's application on the basis of insufficient evidence. SHRT suggested that a complete pulmonary function study be performed.

(7) On October 9, 2009 SHRT, apparently acting on additional medical records received from DHS and on another Medical Review Team denial, requested that DHS schedule a complete independent physical consultative examination by an internist, and a psychiatric examination.

(8) On March 17, 2010, SHRT, being in possession of claimant's entire medical record, denied her application stating that she is capable of performing light, unskilled work per Vocational Rule 202.13.

(9) Claimant is a 50 year old female whose date of birth is January 3, 1960. Claimant is 5' tall and weighs 190 lbs., and claims she has gained 100 lbs. in the last year and a half. Claimant completed 11th grade and has no GED, but can read, write and do basic math if she writes numbers down on paper.

(10) Claimant states that she last worked in 2006 as a door monitor/greeter at [REDACTED] for 1 ½ years, but was fired for calling in sick a lot. Claimant also worked at [REDACTED] as a cashier for 6 months but was fired from there for being sick a lot. Claimant states that she had always been fired from jobs due to excessive absences, and that she drove a cab in the past but was robbed at gun point and has PTSD from this incident.

(11) Claimant lives with her boyfriend who pays the bills and buys her personal items, and receives food stamps. Claimant has a driver's license and drives once or twice per week. Claimant cooks but does not grocery shop alone, cleans the house she lives in, does the dishes and laundry, and watches TV and sleeps a lot to pass the time.

(12) Claimant alleges as disabling impairments: chronic obstructive pulmonary disease, asthma, bipolar disease, attention deficit disorder, depression, left ankle, knee and hip pain.

(13) Claimant has applied for Social Security disability and been denied, and is appealing the denial.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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).

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 year 2006. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she 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 an April 3, 2008 evaluation from a pulmonary clinic. Claimant is described as a pleasant, obese female who presented to the clinic for evaluation of COPD, cough, and wheezing. Claimant's chief complaint was shortness of breath with little activity as well as waking up at night short of breath, issue that has been going on for at least a year. Claimant reported having a chest x-ray a year ago, but did not know the results of this. Claimant also reported having extensive cardiac workup in November, 2007, which included echo and treadmill, this was related to some chest pain she was having, and according to her all of the exams were unremarkable. Claimant has been smoking for 30 years but is currently down to a half pack a day. Claimant was assessed with asthma/COPD/possible chronic bronchitis. Claimant was scheduled for a sleep study and pulmonary function tests, and counseled on smoking cessation. Claimant was also diagnosed with bipolar disorder.

General Progress Note of January 19, 2009 lists claimant's weight at 187 lbs. and her blood pressure at 132/98. Claimant reported she had stopped smoking for 2 weeks and takes her medications, and is breathing better and feeling fine. However, a few days ago claimant's fiancée was diagnosed with recurrence of non-Hodgkins disease and she had reverted back to smoking. Claimant is now interested in trying Wellbutrin for smoking cessation. On exam claimant's lungs were clear to auscultation bilaterally, her effort was normal, and there was no wheezing. Claimant's heart sounds were normal.

April 1, 2008 psychological evaluation performed for [REDACTED] quotes the claimant as saying this is her second application for benefits and that she has COPD, ADD and bipolar disorder. Claimant states she cannot work, as she can't even get out of bed on

some days. Claimant's list of medications includes Advair, Combivent, Albuterol, a nebulizer, Prednisone, Ritalin, Tegretol, and Trazodone. Claimant reported not participating in mental health counseling at [REDACTED] since November, 2007, and that she sought services when she was in her mid-20s and again in approximately 2002. Claimant denied any history of psychiatric hospitalization. Claimant reported that she feels depressed almost everyday and just feels worthless, and also reported hypersomnia and increased appetite. Claimant further reported three suicide attempts in the past but was unable to provide approximate dates, and that she thinks of suicide approximately once per month. Claimant did report past history of substance abuse, including alcohol, powder cocaine and marijuana, but that she participated in an outpatient substance abuse program when she was in her mid 20's and no longer uses such substances. Claimant states she enjoys crafts, visiting with her children, and going swimming, and also riding motorcycles, although she engages in this activity less than she did in the past because she does not like to leave the house.

Claimant was driven to the interview by her boyfriend and she arrived on time. Claimant's ambulation and speech were normal, her clothing was clean and appropriate to the weather, and her hygiene was intact. Claimant became very tearful at the Calculations section of the evaluation and subsequently became less cooperative making comments "this is stupid". Claimant was initially cooperative, yet became increasingly guarded. Her intelligence appeared average and no psychotic intrusion was observed. Claimant denied visual or auditory hallucinations, but described delusional thought content commenting that sometimes she thinks people are talking about her. Claimant's emotional reaction was depressed and anxious. She was oriented to person, place and time. Claimant was diagnosed with bipolar disorder, most recent episode depressed, ADHD, delusional disorder, mixed type, health issues, and current


GAF of 41. Claimant's prognosis for improved emotional stability is fair and she was encouraged to continue participation in mental health treatment and to continue consultation with prescribing physician to evaluate efficacy of medication.

Psychological Report of March 26, 2009 upon referral from DHS quotes the claimant as saying she is seeking disability benefits for COPD, Bipolar Disorder, and ADHD. Claimant described problems with depression, anxiety, impulsiveness, and moodiness, among other things. Claimant was breathing very heavily and in a dramatic way after walking from the waiting room to examiner's office, but did not have the same breathing difficulties after the interview when she walked back toward the waiting room. Claimant was initially a bit defensive appearing with the process and talked about her anger at her therapist from Catholic Social Services for releasing information about her that she did not want released. Claimant was very vague in her answers, particularly regarding her own behavior, but her affect was generally appropriate and consistent with what was being discussed. Claimant reported her longest job being a cab driver for 6 or 7 years until 8 years ago, until she was robbed at gunpoint on the job. Claimant often stated she could not remember past events, and as a result it was really difficult to get a good history of her mental health concerns.

Claimant was fully oriented during the evaluation, but it was difficult to gauge her memory for events because she was quite vague in describing things and indicated that it was her preference not to talk about some aspects of her history. Memory for recent events appeared to be adequate, as well as intelligence, judgment and insight. Claimant completed MMPI-2-RF test, a self-report measure that is helpful in understanding clinical symptoms and personality style. Claimant endorsed an extremely high number of infrequently reported symptoms, even by individuals with genuine, severe psychopathology with credible symptoms. Looking at

claimant's profile, this may be due in part to some carelessness or inconsistent responding on her part, as well as an effort to over-report symptoms. As a result, her profile is not interpretable.

Claimant's diagnostic formulation is that of PTSD (provisional), mood disorder, ADHD per history, and GAF of 50. Examiner states in her summary that it is her impression that the claimant is experiencing symptoms of PTSD and a mood disorder that are contributing to her current problems. Personality characteristics are also seen that impact her functioning and contribute to her mood instability, but these results are tentative and must be considered with caution. Results are based on a meeting with the claimant that lasted about an hour in which she was quite vague, in addition to test results that are not valid and suggest a desire to emphasize, and perhaps over-emphasize, her difficulties. While the claimant clearly has some mental health related impairment, her vague responses to questions about her behavior and her invalid test results make it difficult to determine the extent of her difficulties and the impact they are having in her life. It is difficult to determine whether claimant's presentation is more consistent with someone who is vague and exaggerating symptoms due to some secondary gain, versus someone who is mistrustful of others and does not want to admit her own faults, but who also expects others to overlook their very real and debilitating symptoms. It is the examiner's sense that both may be at play for the claimant.

 states that the claimant is being seen in connection with her having appealed her discharge from OP treatment at CSS earlier this year. Claimant is seeking both to return to OP treatment and to resume medications. Claimant states that she had trust issues when the agency released more information than she was comfortable with to DHS as part of the packet connected with her application for disability. Claimant complains of very long-term problems with depression and moods, with a pattern that is

consistent with bipolar disorder and also of long-term panic disorder. Claimant is engaged and currently living with her fiancée. Claimant reported not having “so much” suicidal ideations lately, but that she had “long ago” made two attempts, one by cutting and another by OD. Claimant has no current suicidal ideation, plan or intent. Claimant reported having psychotic symptoms, such as having value delusions of reference from TV content and hearing voices, in the past, but these were not present today.

Claimant reported having previous outpatient therapy, but spaced over many years while she was using alcohol and substances. Claimant described having periods of depression and then occasional spikes of mania, and also having panic episodes. Claimant was diagnosed with bipolar disorder and panic disorder with agoraphobia, COPD, asthma, and PTSD.

[REDACTED] medical evaluation quotes as claimant’s chief complaints COPD, ADD, and bipolar disorder. Claimant reports a history of emphysema over the past two years. She can walk up 14 stairs before she gets winded, and does have a cough without sputum production. Claimant is able to drive on occasion and grocery shop, but mostly “sits around and gains weight”. Claimant stated she is at her maximum weight of 175 lbs. at present, and has been increasingly more depressed. Claimant does not know how long she can sit, stand or lift. Claimant was currently smoking ½ pack of cigarettes per week.

Claimant was cooperative in answering questions and following commands, but had a depressed affect. Claimant’s immediate, recent and remote memory is intact with normal concentration. Her insight and judgment are both appropriate, and she provided a good effort during the examination. There are moderate bronchial breath sounds with expiratory wheezing present, but there is no accessory muscle use. All of claimant’s other examination areas are unremarkable. Claimant was diagnosed with emphysema as she did have moderate bronchial

breath sounds associated with wheezing. Claimant continues to smoke and her current prognosis is guarded. Avoidance of inciting factors would be helpful in the short-term.

Pulmonary function studies of February 9, 2010 states that only post tracing were performed as the claimant used her inhaler just prior to testing. Claimant weighed 188 lbs. and was 58.5” in height. Claimant’s Forced Expiratory Volume (FEV1) was 1.4 and Forced Vital Capacity (FVC) was at 1.8, at lowest values.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant does have issues with asthma/COPD, but has now quit smoking according to her hearing testimony, and medical record indicates that she had felt much better in the past when she quit smoking. Claimant does have impaired breathing ability with exertion, but it does not rise to the level of being severely restrictive.

There is evidence in the record indicating that claimant suffers mental limitations. However, conclusions as to claimant’s mental problems appear to be based on her self-reporting of symptoms, which are noted to appear to be substantially exaggerated at times. Claimant testified that she weighs 190 lbs. at the time of the hearing after gaining 100 lbs. in the last year and a half, which was untrue as she has not weighed less than 175 lbs. in the medical records provided. According to claimant’s hearing testimony elicited by her attorney she is at times delusional and hears voices at grocery stores, gets anxiety attacks and runs from the stores. Claimant also testified that she is in bed a lot, has attention problems and does not have a social life. While the claimant appeared depressed during some of the psychological evaluations, none of these evaluations list the claimant as exhibiting serious mental disorder. Claimant told the

examiners she had tried to commit suicide several times in the past, but could not give any indication as to what period of time these attempts took place in. 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 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 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 being a door monitor/greeter at a grocery store, which would be a simple job performed with little exertion. Claimant was also a cashier, waitress and a bartender 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 [REDACTED] [REDACTED]... 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 at least light 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 and light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 50), with limited education and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.10.

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.

The department's Bridges 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, page 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 sedentary and light 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: May 10, 2010

Date Mailed: May 10, 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.

IR/tg

cc:

