

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: 2009-34000
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 3, 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 November 3, 2009. Claimant personally appeared and testified. [REDACTED], a social worker also appeared at the hearing. Claimant testified at the hearing that she did not have a representative at the hearing and was not going to have anyone represent her. The hearing proceeded and claimant submitted additional medical information. After the hearing was concluded, [REDACTED] contacted the department and stated that he was the authorized representative and he was objecting to claimant's hearing being held in his absence. This Administrative Law Judge granted a continuance pursuant to [REDACTED] objection and sent him a letter on November 6, 2009 stating that a continuance had been granted and that he and the claimant would receive notice of the continued hearing in the mail and he would be able to appear at that time and place his case and any additional information on the record. He was provided with a digital copy of the hearing and the entire medical file. On

November 11, 2009, [REDACTED] contacted [REDACTED] via e-mail and stated, “Dear [REDACTED], I am in receipt of the CD of the hearing and 57 pages of evidence entered into the record at the beginning of the hearing. Toward the end of the hearing the claimant submitted an additional 43 pages of evidence that was sent to Judge Lain by the DHS caseworker. This evidence was going to be sent to the SHRT for review. The claimant waived her right to timeliness of the decision without the benefit of representation in order to submit same. I have not been given a copy of this new evidence. Also, I would not have submitted same at the time of hearing as I do not want to waive the claimant’s right to a timely decision. I have reviewed the tape of the hearing and the evidence from 1-57. I do not want the other evidence submitted to SHRT. I want it returned to me. I do not want another hearing. I simply want Judge Lain to issue a decision with the record as it stands including Exhibits 1-57 and the 23-minute hearing tape. Let me know if we can rescind the new evidence and the waiver of timeliness. Also please advise if the new evidence will be sent to me.” The e-mail was sent on Wednesday, November 11, 2009 at 2:00 p.m.

On November 18, 2009, the Administrative Law Judge Lain received the additional medical information from the claimant and caseworker via ID mail. Because claimant had waived the timeliness standards on the record and requested to submit the additional medical information, the Administrative Law Judge sent the additional medical information to the State Hearing Review Team (SHRT) for a recommendation because the evidence was in existence at the time of the hearing. Not considering the additional medical information will be grounds for reconsideration or a re-hearing.

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

(2) On July 14, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 16, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 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 light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 203.20.

(6) The hearing was held on November 3, 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 November 16, 2009.

(8) On November 17, 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) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.10.

(9) Claimant is a 53-year-old woman whose birth date is [REDACTED]. Claimant is 5' tall and weighs 120 pounds. Claimant attended the 9th grade and has no GED. Claimant is able to read and write and can add.

(10) Claimant last worked in 2005 at the [REDACTED] where she supervised housekeeping. Claimant stated on the record that she worked for approximately 15 years as a housekeeping supervisor at hotels.

(11) Claimant alleges as disabling impairments: panic attacks every 2 months, a bad knee, arthritis, carpal tunnel syndrome, a rotator cuff tear, depression, anxiety, and pain in her hands, knee, and back.

(12) The continuance was held on December 10, 2009.

(13) At the continuance, claimant and her representative decided that they did not want to waive the time limits anymore, and they wanted to withdraw the additional medical evidence which had been submitted and did not want the evidence sent to SHRT or considered in the decision.

(14) The Administrative Law Judge considered the claimant's request and allowed on the record that the information would not be considered, but determined that since SHRT had already reviewed the additional information and rendered a decision that it was in the best interest of the claimant to keep the information as a part of the record and provide claimant's representative with a copy of the SHRT decision and additional information even though the information was not used in consideration of the decision, as requested by the claimant and her representative.

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a mental residual functional capacity assessment dated [REDACTED] indicates that claimant was not significantly limited in most areas and was only moderately limited in a few areas. Claimant was not markedly limited in any area mentally. (pp. 4-5) Claimant was diagnosed with adjustment disorder with mixed emotion and arthritis. Her GAF was 58-60. She had no delusion thinking, no hallucinations, was mostly preoccupied with her physical issues and pain, and had no medical insurance.

(pp. 2-3 of the psychiatric/psychological examination report of the new information)

An [REDACTED] examination of the left knee, frontal, lateral and oblique radiographs of the left knee were obtained and the findings were no acute fractures or dislocations appreciated. There was mild narrowing of the medial compartment. The lateral and patellofemoral compartments were intact. A mild degree of increased density was seen within the medial compartment, suggestive of chondrocalcinosis. No evidence of a sizable joint effusion. The impression was no acute osseous process. (p. A1)

A [REDACTED] internal medical examination conducted [REDACTED] indicates that claimant was 53-year-old lady. Her weight was 120 pounds. Her height was 5' tall. Blood pressure was 118/72. Respiratory was 16. Temperature was 98.4. Pulse was 66. Her HEENT: Her scalp was normocephalic. Eyes PERRLA. Fundoscopic: No AV narrowing, no hemorrhage, oral cavity had few caries. The neck was supple. No JVD or thyromegaly. Trachea was in the midline. The chest was essentially clear to auscultation and percussion. The cardiovascular was normal S1 and S2 without murmurs or gallops. The abdomen was soft and non-tender. No rebounds, no peritoneal signs, no hepatosplenomegaly, and no organomegaly. No hernias. The extremities were without gross edema. The musculoskeletal exam: The left lower extremity—palpable effusion with laxity of the left knee. No Homan's sign or palpable cords. Carpal tunnel: There is a cortical Tinel's and Phalen's sign. Full extension was less than zero. The cervical and thoracic spine had full range of motion. The lumbar spine the claimant could flex approximately 70 degrees. Extension was approximately 21 degrees. Right lateral and left lateral flexion was approximately 22 degrees. In her gait, the claimant walked with a limp secondary to the left knee problem. The neurological examination: The claimant was

alert and oriented. Mental status was 10/10. Cranial nerves II – XII were intact. The impression was there some left knee pain to rule out meniscus and cruciate injury of the left knee.

(p. 4 of the old information)

A chest x-ray was conducted [REDACTED]. The PA and lateral views showed evidence of mild COPD. The visualized lungs were clear. There was no pleural effusion. The heart was normal in size and shape. There was mild arteriosclerosis and tortuosity of the thoracic aorta was noted. Mediastinum, hila, and pulmonary vascular were normal. Arthritis and osteoporosis of the entire thoracic spine was also noted. The impression was evidence of mild COPD and was negative for active disease. In the lumbar spine there was only a single AP view obtained and it showed only L1, L2, and L3. There was arthritic and osteoporotic change of the visualized portion of the lumbar spine. (p. 6 of the old information)

A Medical Examination Report of [REDACTED] indicates that claimant was 5' tall and 118 pounds. Her blood was 90/60 and she was right-hand dominant. Her mental status was that she was depressed but she was normal in examination areas. The clinical impression was that she was deteriorating and that she could not use either of her upper extremities for simple grasping, reaching, pushing/pulling, or fine manipulating and could not operate foot and leg controls and would not be able to stand or sit for long. She could sit for less than 6 hours in an 8-hour day and stand or walk less than 2 hours in an 8-hour day. Claimant had some comprehension and sustained concentration problems because she has severe anxiety and depression, myalgia, and arthritis. (pp. 38-39)

A Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination. She was 5' tall and 118 pounds. Her blood pressure was 130/70. The clinical impression was that she was deteriorating and she could occasionally lift

10 pounds or less. She could stand or walk less than 2 hours in an 8-hour day and she did not need assistive devices for ambulation. She could not use her upper extremities for pushing or pulling. (pp. 40-41)

It should be noted that the new information psychiatric and psychological examination report and the residual functional capacity assessment from [REDACTED] was already a part of the record in the old medical packet at pages 34-38.

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 as it is internally inconsistent. The DHS-49, Medical Examination Report, indicates that the examination areas are normal. There are no laboratory or x-ray findings listed in the DHS-49, Medical Examination Report, to support the severe restrictions made by the report. There is insufficient support for the extreme physical limitations listed on the second page which indicates that claimant cannot lift anything over 10 pounds or use her upper extremities for any repetitive action including even simple grasping. The form indicates that assistive devices are not medically required or needed for ambulation; however, there is insufficient objective medical evidence in the file to support the opinion that claimant can only sit, walk, or stand less than 2 hours in an 8-hour day. The clinical impression is that claimant is deteriorating; however, the only finding made in the file is that claimant does have some arthritis in her lumbar spine. 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, Medical Examination Report, and claimant have restricted claimant from tasks associated with occupational functioning based upon claimant's reports of pain (symptoms) rather than medical findings. Claimant testified on the record that she does have a driver's license but does not drive. Her daughter usually takes her. Claimant testified that she does make sandwiches and she does not grocery shop or clean her home or do any outside work and has no hobbies. Claimant testified that she can walk a half a block, stand for 20 minutes, and sit for 20 minutes at a time. Claimant testified that she has trouble getting out of the shower. Claimant testified she is right-handed and that she has carpal tunnel syndrome in her hands and arms. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 4. Claimant testified that she does smoke 12 cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program and that she stopped smoking marijuana 3 years ago. Claimant testified that in a typical day she gets up and eats toast, watches television in her room mostly, and lies down in bed all day long. The caseworker testified on the record that claimant was walking slowly, wearing a sling, and crying throughout the hearing.

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 and claimant's testimony is insufficient to establish that claimant has a severely restrictive physical impairment or combination of impairments which has kept her from working for a period of 12 months.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state.

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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, 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. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was light work. As a supervisor of housekeeping does not require strenuous physical exertion, there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

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'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. Claimant did testify on the record that she does receive some relief from her pain medication. Therefore, this 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.

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.

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/

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

Date Signed: March 4, 2010

Date Mailed: March 4, 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:

[REDACTED]