

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: 2009-350
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 13, 2008
Hillsdale 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, an in-person hearing was held on November 13, 2008. Claimant personally appeared and testified. Claimant was represented at the hearing 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 November 28, 2007, claimant filed an application for Medical Assistance and State Disability Assistance and retroactive Medical Assistance benefits to August 2007.

(2) On June 10, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 16, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On September 11, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 14, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant was admitted in [REDACTED] due to right-sided weakness but testing was all negative. There were no definite neurological deficits. Her gait was normal. Her mood was noted to be normal in [REDACTED]. The claimant was noted to be over 300 pounds which is most likely her most limiting problem. Her heart tests and breathing tests were basically unremarkable. She has no mental health treatment for bipolar but did receive some medications from her treating doctor. The claimant will be limited from heavy lifting due to her weight. 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 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 closely approaching advanced age at 51, 12th grade education and an unknown work history, MA-P is denied using Vocational Rule 203.21 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 claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on November 13, 2008. 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 January 13, 2009.

(8) On January 29, 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) pursuant to Medical-Vocational Rule 203.21.

(9) Claimant is a 50-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 300 pounds. Claimant recently gained 25 pounds. Claimant has a GED and attended the 12th grade. Claimant is able to read and write and does have basic math skills but considers math to be hard.

(10) Claimant last worked as a home healthcare aide. Claimant has also worked at [REDACTED] inside working as a cashier, at [REDACTED] in food prep and at a cafeteria serving food.

(11) Claimant alleges as disabling impairments: obesity, high cholesterol, back problems, hypertension, bipolar disorder, diabetes mellitus, incontinence, sleep apnea, asthma, coronary artery disease and TIAs.

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 in ten years. Therefore, this Administrative Law Judge finds that claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant was admitted in [REDACTED] due to right-sided numbness and weakness (Page 89). The claimant's CT scan and MRI of the brain were both negative. A MRA of the intracranial and extracranial vessels was also negative. She had no definite neurological deficits documented (Page 86). In [REDACTED] the claimant's gait and station were noted to be normal (Page 59). She was alert and oriented x3. Mood was normal (Page 59). In [REDACTED] the claimant was 305 pounds and her blood pressure was 128/82 (Page 16). Lungs were clear and heart sounds were normal. She had tenderness in the lower back (Page 17). In [REDACTED] claimant had tenderness and muscle spasms in her back (Page 19). In [REDACTED] the claimant had pulmonary function studies done. She was noted to be 65" tall. She had normal full pulmonary function tests (Page 4). Notes dated [REDACTED] showed the claimant had a heart catheterization and stress test in [REDACTED]

which were negative (Page 10). On [REDACTED], claimant's blood pressure was 196/118, her pulse was 104, and respirations were 24. Her pulse oximetry was 96 percent on room air. Claimant was alert and appropriate. She answered questions without difficulty. Her pupils were equal, round and reactive to light. Extraocular muscles were intact. She did state that she had some blurred vision in the right eye. External inspection of the ears and nose revealed no acute abnormalities. Examination of the oropharynx was normal. The neck was supple with no masses or tenderness. Claimant's thyroid was normal. She had normal respiratory effort. Auscultation of lungs revealed normal breath sounds. Heart auscultation revealed RRR and no abnormal sounds or murmurs. Extremities revealed no melo traumatic edema. There was normal range of motion, normal motor strength and tone. Inspection of palpation of the skin and subcutaneous tissue revealed no acute rashes, lesions or indurations. Neurological: her cranial nerves 2 through 12 were grossly intact. A CT scan of the brain was negative. Claimant had a normal chest x-ray (Pages A3 and A4). In [REDACTED], claimant had a normal pulmonary function test (Page 4).

At Step 2, claimant has the burden of proof of establishing she has a severely restrictive physical or mental impairment or combination of impairments that have lasted or are 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. The objective medical evidence on the record indicates that claimant has not established she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept her from working 12 months or more. From the evidence indicated on the record and in the medical forms, claimant was a substance abuser using heavy alcohol which she is now in complete remission from. The objective medical evidence does not establish that claimant has a severe impairment or combination of impairments

which have lasted the durational requirement of 12 months or more or kept her from working for 12 months or more. However, since the claimant has testified on the record that she has hypertension, high cholesterol, diabetes mellitus, transient ischemic attacks, degenerative disc disease, and vision problems, this Administrative Law Judge will continue to proceed through the sequential evaluation process for the sake of argument since Step 2 is a *de minimus* standard.

At Step 3, claimant's impairments do not rise to the level necessary to specifically listed as disabling as a matter of law.

At Step 4, claimant testified on the record that she does not have a driver's license because she does have some vision problems and that her friend takes her where she needs to go. Claimant lives alone in an apartment and is single with no children under 18. Claimant's father supports her. Claimant cooks two times per week and cooks things like chicken and hamburger and she grocery shops one time per month and needs help with picking things up and her memory. Claimant testified that she does clean her home by doing the dishes, vacuuming, doing laundry and cleaning the bathroom. Claimant testified that her hobbies are reading and crocheting and she does those two times per week. Claimant testified that she can walk a half a block and then she has to rest, can stand for 15 minutes and can sit for two hours at a time. Claimant testified that she cannot squat because of her lower back and cannot bend much at the waist. Claimant testified that she is able to shower and dress herself but cannot tie her shoes and once in awhile she can touch her toes. Claimant testified that the heaviest weight she can carry is a gallon of milk and that she is right handed and she has some right side weakness. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 6. Claimant stated that in a typical day she gets up and gets dressed and then goes

for a walk and then has lunch, goes to the library with a friend, checks her e-mail and sits and watches television.

The Administrative Law Judge finds that claimant has not established that she can no longer perform any of her prior work. Claimant should be able to perform her prior work as a food service person at even [REDACTED] or [REDACTED] even with her impairments. Claimant should probably avoid heavy lifting because of her weight. However, claimant is disqualified 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 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 or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

Claimant testified on the record that she has depression and a bipolar disorder and she has been depressed about everything for her whole life.

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 it so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. She was able to answer all the questions at the hearing and was responsive to the questions. 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. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical or psychiatric evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a person who is 50 years old who is closely approaching advanced age, with a high education and an unskilled work history who is limited to light or sedentary work is not disabled pursuant to Medical-Vocational Rule 201.13.

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, 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 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 5, 2009

Date Mailed: March 6, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

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