

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: 2009-35713

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:
[REDACTED]

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 [REDACTED]. 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 and State Disability Assistance benefits alleging disability.

(2) On June 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 22, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 30, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 24, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested a complete independent physical consultative exam by an internist as well as copies of hospital records and treatment records.

(6) The hearing was held on November 03, 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 January 28, 2010.

(8) On February 2, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing her past work as a buyer/commodity manager.

(9) Claimant is a 37-year-old woman whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 240 pounds. Claimant has a Bachelor's of Arts Degree in Public Administration/Business Administration and is able to read and write and does have basic math skills.

(10) Claimant last worked [REDACTED] as a manager and a buyer in procurement and purchasing. She has worked as a purchasing manager and is a safety and health coordinator.

(11) Claimant receives unemployment compensation benefits in the amount of [REDACTED] bi-weekly.

(12) Claimant alleges as disabling impairments: A cervical spine injury, right shoulder, elbow, wrist and knee pain, herniated disc in her shoulder, inability to lift her arm above her head. Claimant claims these injuries from a fall in a bathroom at the [REDACTED] [REDACTED]

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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 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

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

It should be noted that claimant does receive unemployment compensation benefits in the amount of ██████ bi-weekly. A person can legally receive unemployment compensation benefits if

they meet a series of eligibility requirements including: they must be monetarily eligible, they must be totally or partially unemployed, and they must have had an approvable job separation. They must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. An individual must be available for and seeking full time work. Under certain conditions a person who has a disability may be able to limit his or her availability to work part-time only. A claimant can qualify for unemployment compensation by providing document from a licensed physician which establishes that he or she has a physical or mental impairment that is chronic and/or is expected to be long term or permanent and the impairment leaves him/her unable to work full-time and demonstrating that the impairment does not effectively remove him/her from the labor force. In the instant case, based upon claimants receipt of unemployment compensation benefits, she would not be considered disabled and would be disqualified based upon her holding herself out as available for and seeking work and being physically or mentally able to work.

The objective medical evidence on the record indicates that a physical examination on [REDACTED] indicates that the claimant was well-developed, well-nourished, cooperative and in no acute distress. She was awake, alert and oriented x3. She was dressed appropriately and answered questions fairly well. She was 5'9" tall and weighed 240 pounds. Her pulse was 84, respiratory rate 16 and her blood pressure was 104/82. Visual acuity without glasses was 20/blurred on the right and 20/blurred on the left. With glasses 20/20 on the right and 20/20 on the left. HEENT: Normocephalic/atraumatic. Eyes: Lids are normal. There is no exophthalmos, icterus, conjunctiva, erythema or exudates noted. PERRLA: Extraocular movements intact. Ears: No discharge in the external auditory canals. No bulging erythema, perforation of tympanic membrane noted. Nose: There is no septal deformity, epistaxis or rhinorrhea. Mouth:

Teeth are in fair repair. Neck: Supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid is not visible or palpable. ENT: External inspection of the ears and nose reveal no evidence of acute abnormality. In the respiratory system the chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There are no rales, rhonchi or wheezes noted. No retractions noted. No accessory muscle usage noted, no cyanosis noted. There is no cough. In the cardiovascular area there was normal sinus rhythm. S1, S2. No rubs, murmur or gallop. Gastrointestinal: soft, benign, non-distended. Non-tender with no guarding, rebound, palpable masses. Bowel sounds are present. Liver and spleen were not palpable. Skin had no significant skin rashes or ulcers. Extremities had no obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement is noted. There is mild tenderness to palpation in the lower lumbar area. In the bones and joints, the claimant does not use a cane and/or aid for walking. Able to get on and off the table without difficulty. She has a slight limp on the left side. Stance is normal. Tandem walk, heel walk and toe walk are done without difficulty. Able to squat to 50% of the distance and recover and bend to 90% of the distance and recover. Grip strength is equal bilaterally. The claimant is right-handed with gross and fine dexterity appeared bilaterally intact. Abduction of the shoulders is 0-140 on the right and on the left 0-150. Flexion of the knees 0-140 on the right and 0-100 on the left. Straight leg raising while lying 0-50, while sitting 0-90. In the neurologic area, the general: the claimant is alert, awake and oriented to person, place and time. Cranial nerve II: Vision as stated in Vital Signs. III, IV and V: No ptosis, nystagmus. PERLLA. Pupils 2mm. bilaterally. V: No facial numbness. Symmetrical response to stimuli. VII: Symmetrical facial

movements noted. VIII: Can hear normal conversation and whispered voice. IX, X: Swallowing intact. Gag reflex intact. Uvula midline. XI: Head and shoulder movement against resistance are equal. XII: No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory Functions: Intact to sharp and dull gross testing. Motor Exam: Reveals fair muscle tone without flaccidity, spasticity or paralysis. She has a slight limp on the left side. Weakness against resistance right upper extremity. The impression is chronic bone and joint pain secondary to a slip and fall. The claimant has a history of chronic bone and joint pain secondary to a slip and fall which occurred in [REDACTED]. She has pain in her neck and states she has 3 herniated discs in her neck. She has right wrist pain, right shoulder pain, left knee pain and a loose body in both knees. She states she has chronic swelling of her knees and has pain on a daily basis taking Motrin and Flexeril. Claimant's range of motion is normal in all areas except for the lumbar spine flexion with 0-60 degrees and the hip forward flexion, right was 0-50 degrees and left 0-50 degrees. The knee flexion was 140 degrees on the right and 100 degrees on the left.

An MRI of the right shoulder conducted on [REDACTED] indicates that there is a subacromial impingement secondary to down slope and configuration of the acromioclavicular joint was supraspinatus, infraspinatus, and subscapularis tendinosis. (p15) An MRI of the cervical spine indicates reversal of normal cervical lordosis due to muscle spasm. Abnormal bright signal within the spinal cord on ventral aspect at C4 level measuring about 8mm in length. This may be post-traumatic in nature or due to mild focal area of ischemia in the midline. Focal midline mild herniations of disc at C3-C4, C4-C5 and C5-C6 level as described above. Widely patent neural foramina bilaterally. (pp 16-17) An MRI of the right wrist also done [REDACTED], indicates thickening and acute inflammation in the extensor carpi ulnaris tendon at the level of the ulnar styloid, likely representing partial tendon tear. (p18) A medical examination

report filled out by a chiropractor dated [REDACTED], indicates that claimant can occasionally pick up less than 10 pounds, but never 10 pounds or more. She can stand and walk less than 2 hours in an 8-hour day but can sit less than 6 hours in an 8-hour day. She can use her upper extremities for simple grasping, reaching and fine manipulating. (pp 13-14)

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 alleges that she has no mental impairment in this case, so this decision will be based solely upon physical impairment allegations.

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 finds that claimants stated that she was injured during a slip and fall at the [REDACTED] and the injury occurred in [REDACTED]. Therefore, claimant's impairments lack duration.

The clinical impression is that claimant has a temporary disability with an undetermined date expected to return to work. There is no finding that claimant has any muscle atrophy. Claimant does have some trauma based upon the fall but she does not have any abnormality or injury that is consistent with a deteriorating condition. The internist examination indicates that claimant has basically normal findings in almost all areas, except that she does have some chronic bone and joint pain, secondary to her slip and fall. The herniated discs are mild in her cervical spine according to the MRI results. The Medical Examination Report indicates that claimant should be able to sit less than 6 hours in an 8-hour day. The form indicates that

assistive devices are not medically required or needed for ambulation. Claimant testified on the record that she can walk for a quarter of a mile and she goes to the pool for aerobics. Claimant testified that she stand for 10 minutes and can sit for an hour at a time but cannot squat because of loose bodies in her knees, and she can't bend to touch her toes because of discomfort.

Claimant is able to shower and dress herself and tie her shoes if she is sitting. Claimant testified that she can carry 5 pounds and that she is right-handed and that her left arm is weak and discs hurt and she has discomfort. Claimant testified her pain on a scale from 1-10 without medication is a 10 without medication and with medication is a 7-8.

In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical/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/sedentary work. In addition, claimant is receiving

unemployment compensation benefits, which means that she does hold herself out as being physically/mentally able to work and being available for and seeking work, as she does have to fill out weekly claims for benefits on a timely basis. As a procurement/purchasing manager does not require serious 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 testified that she lives alone in a house and she is single with no children under 18. She has a driver's license and drives 3-4 times per week to physical therapy and to her doctor's appointments. She does cook 2-3 times per week and she cooks things like breakfast and she grocery shops with her boyfriend. 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'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 evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 37), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 claimant should be able to perform her prior 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: April 2, 2010

Date Mailed: April 2, 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.

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