

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: 2009-36721

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 4, 2009

Macomb 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 4, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On June 8, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 18, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On June 29, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On July 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 29, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant underwent cardiac catheterization which showed no major coronary artery disease. Her examination is within normal limits and her depression is stable and the doctor indicated she had no limitations. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to lack of severity.

(6) The hearing was held on November 4, 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 6, 2009.

(8) On November 9, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The new evidence provided by claimant as well as that obtained from the Social Security Administration alters the decision in the following ways. The prior denial was for a non-severe condition per the State Hearing Review Team dated September 29, 2009. The Medical Review Team returned the claimant to past

relevant work, dated June 18, 2009. The decision by the Social Security Administration returns the claimant to past relevant work based upon light exertional physical limitations and no psychiatric limitations. This decision is dated October 9, 2009. The claimant retains the ability to perform light exertional tasks without any psychiatric limitations. Claimant's past relevant work is capable of being performed within these limitations. These limitations are based upon findings of the Social Security Administration denial of the claimant's application for Federal benefits and supported by the medical evidence from the State Disability Assistance application in the file. MA-P, retroactive MA-P and SDA are covered by this denial. Listings 4.04 and 12.04 were considered in this determination.

(9) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 114 pounds. Claimant attended the 9th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked September 19, 2008 at [REDACTED] running machines/parts. Claimant has also worked as a machine operator at [REDACTED] and at [REDACTED] at the counter/cleaning/food prep.

(11) Claimant receives unemployment compensation benefits in the amount of \$1,260 per month.

(12) Claimant alleges as disabling impairments: depression, chest pain, as well as angina, and pain in the left arm.

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 September 19, 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant underwent a cardiac catheterization in [REDACTED] which showed no major coronary artery disease and her ejection fraction was within normal limits at 55%. (pp. 26-27)

A DHS-49 form dated [REDACTED] indicated that claimant's current diagnosis included angina, depression, and tobacco dependence. Her examination was within normal limits except for chest pain which was resulted and chronic depression which was stable. (p. 7) No claimant had no physical or mental limitations. (p. 8) A physical residual functional capacity assessment in the file indicates that claimant could occasionally lift 20 pounds, frequently lift 10 pounds, and

stand or walk with normal breaks for a total of about 6 hours in an 8-hour day and sit with normal breaks for a total of about 6 hours in an 8-hour day. Claimant was able to push or pull unlimited other than as shown for lifting or to carry. Claimant could occasionally climb ramps or stairs, but not climb ladders, ropes, and scaffolds. She could occasionally balance, stoop, kneel, crouch, and crawl. Claimant had no manipulative limitations and no visual limitations. Claimant had no communicative limitations and no environmental limitations.

An [REDACTED] mental status examination indicates that claimant arrived on time for her examination and drove herself to the office. She was neat and clean in appearance and had a slender build and average height with a nice black blouse, kakis, and high-heeled shoes. She wore corrective lenses. Her hair was clean and combed. She wore no makeup. Gait and posture were normal. Speech was clear and articulate. She sat comfortably in her chair. Claimant was cooperative and polite and did not seem to be malingering or exaggerating her symptoms. Her stream of mental activity was organized, goal directed, and logical. Affect was appropriate to the content of the interview. Mood was mildly anxious and depression. The claimant denied any current thoughts of harming herself or others. She has never had paranoia, disturbance of thought, or hallucinations, but admits to passing ideas of just not being around anymore. She stated that she once took pills but was never psychiatrically hospitalized. Sleep was currently disturbed by shoulder pain and worries about money and her health. She could immediately remember 6 digits forward and recall 3 of 3 items forward and she could remember 2 digits backward. She was oriented x3 for sensorium and mental capacity. For 3 large cities she named Warren, Roseville, and Mt. Clemens. The 3 past presidents were Obama, Bush, and Clinton. Her calculations were $4+5=9$, $10-6=4$, $6 \times 3=18$, and $100-7=93$. The abstract meaning of don't cry over spilled milk was it is not important and the meaning of the grass is greener on the other side

means we think things will get better and they don't. Similarities and differences of a piano and a drum were both instruments and an apple and orange were both fruit. In judgment what to do in a theater fire was to get out and what she would do if she found a stamped, self-addressed envelope she would put it in a mailbox. Claimant was keeping up with her activities of daily living unassisted and had no evidence of problems with short or remote working memory. She should be able to do simple, work-related activities at a sustained pace. She was evidencing symptoms of mild general anxiety disorder with some depression although the symptoms did not appear to be interfering with her inability to appropriately interact with family and friends. She was diagnosed with general anxiety disorder with mild depression, angina, and had a GAF of 60, and a fair prognosis. On [REDACTED], claimant was 5'2" tall and weighed 118 pounds. Her pulse was 94, her blood pressure was 162/73, and her vision with glasses was 20/20 in both eyes.

On [REDACTED] physical examination claimant was well-developed, well-nourished, and in no acute distress. Claimant was awake, alert, and oriented to person, place, and time. Her height was 5'2" tall and her weight was 120 pounds. Her pulse was 90, respiratory rate 18, blood pressure 160/75. Visual acuity with glasses, right eye was 20/20, and left eye was 20/20. Her HEENT was normocephalic and atraumatic. Pupils were equal, round, and reactive to light. Extraocular muscles were intact. Sclera was non-icteric. Oropharynx was clear without any lesions. The neck was supple. No JVD noted. No bruit. No thyromegaly. In the respiratory the chest was clear to auscultation bilaterally. No rales, wheezing, or rhonchi. No retractions or accessory muscle usage. Cardiovascular had regular rate and rhythm. No rubs, murmurs, or gallops. In the gastrointestinal area the abdomen was soft and non-tender. No guarding or rebound. No palpable masses. No organomegaly. In the extremities the claimant had a normal gait and stance. She had reasonable squatting and recovery. She managed to get on and off the

examination. She had good hand grip bilaterally. No joint deformity or enlargement.

Neurologically, the claimant was awake, alert, and oriented to person, time, and place. Cranial nerves II-XII were intact. Sensory functions were intact to sharp and dull gross testing. Motor examination revealed fair muscle tone without flaccidity, spasticity, or paralysis. The medical source statement indicated that the claimant should be able to work as far as her physical condition was concerned. There was significant depression which needed appropriate treatment.

The claimant also had angina which could be related to coronary artery spasms. She had limitations for walking and standing or any strenuous activity of lifting more than 20 pounds. She had no limitations for manipulation. She would have some limitation for climbing stairs, ropes, and scaffolds as this might trigger her angina. Her fine and gross dexterity appeared to be intact. The claimant was right-handed. The claimant had good hand grip bilaterally. Tinel's and Phelan's were negative. There was no atrophy or sensory changes. There was no evidence of any joint deformity or enlargement. No subluxation or contractures. No instability. There were no sensory or motor reflex findings. No circulatory deficits. No circumferential measurement discrepancies. All joints had full range of motion. The claimant ambulated well without any ambulation aid. No muscle atrophy. No disorganization, stumbling, lurching, or falling. The claimant had chest pain with a diagnosis of angina. However, she had a cardiac catheterization which was showed essentially clean coronary arteries and also she had good ventricular functioning without any wall motion abnormalities. The claimant continued to have angina. She was on cardiac medicines which help, but she needs to take them all the time otherwise the claimant has frequency of chest pain, which is pain usually not associated with other symptoms like nausea, vomiting, profuse sweating, or radiation. The claimant had moderate hypertension but was well controlled with the same cardiac medication. No history of coronary artery disease.

There was no S3, hepatomegaly, or jugular venous distension. No peripheral or pulmonary edema. No evidence of heart failure. No hepatomegaly or peripheral edema. No evidence of cardiac enlargement. The claimant was able to walk up to 2 blocks and one flight of stairs without chest pain.

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 chest pain and stated that she can walk one block, stand for an hour, sit for 30-45 minutes, and shower and dress herself. Claimant is able to squat, bend at the waist, tie her shoes, and touch her toes. Claimant testified that she can carry a gallon of milk in her right hand and in her left arm she has pain. Claimant testified that her legs and feet are fine and that her back is fine. Claimant testified that she stopped smoking in May 2009. There is no laboratory or x-ray findings listed in the file which would indicate that claimant has a severe impairment. There were no abnormal findings in the musculoskeletal examination. 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, 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 claimant has a severely restrictive physical impairment.

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).

The mental residual functional capacity assessment in the record is very thorough and indicates that claimant has only mild depression. 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. For these reasons, this Administrative Law Judge finds that the evidentiary record is insufficient to find claimant has severely restrictive mental impairment. 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 working as a machine operator and also at Subway as a counter or food prep person, which does not require strenuous physical exertion. There is insufficient 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. It should also be noted that claimant does receive unemployment compensation benefits in the amount of \$1,260 per month. In order to receive unemployment compensation benefits, a person must be

monetarily eligible, they must be totally or partially unemployed, they must have an approvable job separation, and 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. Therefore, this Administrative Law Judge that claimant is also disqualified from receiving disability because she has held herself out to be physically and mentally able to work and being available for and seeking work.

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. 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.

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: February 4, 2010

Date Mailed: February 5, 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.

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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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