

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: 2009-5074
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 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 February 24, 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 August 4, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 23, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 28, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On November 5, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 9, 2008, the State Hearing Review Team again denied claimant's application stating that additional medical information was suggested to assess the severity of claimant's impairments.

(6) The hearing was held on February 24, 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 April 15, 2009.

(8) On April 28, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence.

(9) Additional medical information was submitted and sent to the State Hearing Review Team on June 16, 2009.

(10) On June 23, 2009, the State Hearing Review Team indicated that the claimant applied for benefits in August 2008 with retro to May 2008. The claimant's gait and grip were normal in February 2008. The claimant had a light residual functional capacity prior to her April 2009 examination. A light residual functional capacity would deny the claimant prior to the claimant's 55th birthday. MA and retro are denied prior to March 2009 using Vocational Rule 202.10. In May 2009 the claimant's condition appeared to be worse than in February 2008 and would limit her to sedentary work. However, she would meet a vocational approval as of her 55th birthday in March 2009 based upon the previous light residual functional capacity.

(11) On the date of hearing, claimant was a 54-year-old woman whose birth date was [REDACTED]. Claimant was 5' 2" tall and weighed 189 pounds. Claimant attended the 9th grade and had no GED. Claimant was able to read and write and did have basic math skills.

(12) Claimant last worked in 2003 as a nursing home housekeeper. Claimant has also worked in a factory job and in a restaurant as a cook and a cleaner.

(13) Claimant testified that the Department of Human Services supported her until her daughter turned 18 on June 1, 2007.

(14) Claimant alleges as disabling impairments: back and knee problems, hypertension, gastroesophageal reflux disease, thyroid disease, carpal tunnel syndrome, muscle spasms, arthritis, and diabetes mellitus.

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 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant submitted discharge instructions from a [REDACTED] from an [REDACTED] visit. Her diagnosis was broncho spasm, lymphadenopathy, swollen lymph glands, and anterior chest wall pain. She was given a breathing treatment while she was there and an inhaler. In February 2008 the claimant had a normal gait but used a cane when she entered the room. However, she was able to walk without the cane. She had full range of motion of the knees, hips, ankles, spine, shoulders, elbows, and wrists. She did have crepitus in both knees and was wearing braces on both knees and wrists. Tinel's Sign was negative. Grip was 5/5 bilaterally. Muscle power was 5/5 and deep tendon reflexes were 2+ and bilaterally symmetrical. A DHS-49 form dated [REDACTED] showed the claimant had hypertension, GERD, thyroid, carpal tunnel syndrome, arthritis, and low back pain. However, no objective findings were given to support these diagnoses. The doctor indicated that claimant could occasionally lift 10 pounds and required the use of a cane for ambulation. A [REDACTED] physical examination indicated that claimant was 5' 2" tall and weighed 206 pounds. Her blood pressure was 180/90 and repeated at 180/90. Temperature was 98 degrees Fahrenheit. Pulse was 73 per minute and regular. Respiration was 15 per minute and regular vision. Left eye was 20/50, right eye was 20/30, and in both 20/25 without glasses. The claimant does not wear glasses. Her field of vision was within normal limits. Pupils were equal and reactive to light and accommodation. Extraocular movements were intact. She walked into the examination room with a cane. She could walk without the cane but with a limp on the right side. Even with the cane, she limped. She had no sensory or motor deficits in the lower extremities. There was no evidence of vascular or arterial insufficiency. Pedal pulses were intact.

There was no evidence of venous insufficiency. Claimant was right-hand dominant. She had difficulty tying her shoelaces but could button her clothes. Her right hand pinch and grip strength was 3/5 and in the left was 4/5. She had some intrinsic muscle loss but sensory loss in either feet or hands. Claimant was fully alert and well oriented x3. Her speech was normal. Her hearing was normal. She was obese. Neurologically, the cranial nerve I was not tested. II through XII were thought to be intact. No facial asymmetry noted. The skin was normal with no rashes. The head was within normal limits. The neck had no cervical adenopathy. There was no jugular vein engorgement. No thyroid enlargement. The ears were within normal limits. Nose and throat nothing abnormal was detected. In her chest she was not using her upper accessory muscles for respiration. No history of shortness of breath. On auscultation she had clear vascular breath sounds. First and second heart sounds were heard with no murmur. In the abdomen she had a history of a cholecystectomy. No hepatosplenomegaly. No masses palpated, and no tenderness. In the musculoskeletal extremities the cervical spine range of motion was within normal limits. In the lumbar spine flexion was 0-60 degrees, extension was 0-15 degrees and right and left lateral flexion was 0-15 degrees. Straight leg raise test was 0-60 degrees bilaterally. Shoulders, elbows, hips, ankles, wrists, and hands were within normal limits as to range of motion. Left knee was nearly normal at 0-140 degrees. Right knee revealed flexion of 0-110 degrees. The knee was swollen, has some effusions, tenderness, and crepitations. Claimant suffers from non-insulin dependent diabetes mellitus and her blood sugar was under control. There was no evidence of neuropathy or no evidence of retinopathy. Hypertension was controlled with medication. She had chest pain with angina-like symptoms and she had hypertensive heart disease.

An x-ray of the chest taken [REDACTED] indicates the heart was normal in size and shape. Both lungs were free of active infiltrates or vascular congestion. The visualized bony thorax and the soft tissue surrounding it were unremarkable. On [REDACTED], an x-ray of the cervical spine indicates that the cervical spine was examined with AP, lateral and both oblique projections. There were no acute fractures noted. C6 and C7 were not adequately visualized in lateral projection. The remaining intervertebral disc spaces and vertebral body heights appeared adequately maintained. Vertebral body alignment appeared normal. Oblique projections demonstrated the exit foramina to be patent. The facet articulations appeared to be within normal limits. An x-ray of the knees indicated no acute fractures, subluxations, bony abnormality or joint deformity was seen. The soft tissue surrounding the osseous structure appeared normal.

The lumbar spine was examined [REDACTED], x-ray taken in AP, lateral and both oblique projections. There were no acute features evident. The intervertebral disc spaces and vertebral body heights appeared adequately maintained. The vertebral body alignment was within normal limits. The lumbar pedicles, transverse processes, and spinous processes appeared intact. An oblique projection demonstrated facet articulations to be within normal limits. There was no spondylosis or spondylolisthesis noted. There was evidence of previous right upper quadrant surgery.

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. Based upon the department's determination, claimant does have a severe impairment that has lasted or will last the durational requirement of 12 months.

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

At Step 4, claimant had a light residual functional capacity prior to her May 2009 examination. A light residual functional capacity would deny the claimant prior to claimant's 55th birthday. MA-P and retro MA-P were denied prior to March 2009 using Vocational Rule 202.10. Claimant's prior work was light as she was a restaurant cook and did light housekeeping. Claimant is disqualified from receiving disability at Step 4 prior to her 55th birthday.

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. This Administrative Law Judge finds that claimant's condition did worsen as of May 2009 and that her residual functional capacity indicated that claimant would only be able to perform sedentary work. Claimant's past work was light work.

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).

Based upon the State Hearing Review Team decision that claimant is limited to sedentary work and she has a vocational approval in light of the fact that she is advanced age and is limited to sedentary work she would meet vocational approval as of her 55th birthday in March 2009 pursuant to Medical Vocational Rule 202.01 as claimant is of advanced age, with a limited or less education and unskilled prior work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established that she is disabled for purposes of Medical Assistance and State Disability Assistance benefits as of her March 2009 birth date. Claimant does meet the disability criteria for Vocational Rule 202.01 because she is of advanced age, limited or less education, and unskilled work history.

Accordingly, the department's original decision is AFFIRMED. The department properly denied claimant's application for disability-based Medical Assistance and State Disability Assistance benefits prior to March 2009. Once claimant turned 55 years old, the department's decision is REVERSED and the State Hearing Review Team's decision of June 23, 2009 is hereby adopted.

The Administrative Law Judge based upon the findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance program and the State Disability Assistance program as of March 1, 2009.

Accordingly, the department is ORDERED to reinstate claimant's application, if it has not already done so, to determine if all other non-medical eligibility criteria are met from March 2009 forward. The department shall inform the claimant of the determination in writing.

The department is ORDERED to assist claimant in gathering medical information for a medical review in June 2010.

/s/

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

Date Signed: July 29, 2009

Date Mailed: July 30, 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.

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