

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: 2009-5097
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 March 18, 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 May 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 1, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On August 6, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 28, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 5, 2008, the State Hearing Review Team again denied claimant's application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, light work.

(6) Claimant is a 36 year-old female whose birth date is September 14, 1972. Claimant is 5'2" tall and weighs 102 pounds, after losing 35 pounds in the last 4 months due to the pain that she is in. Claimant attended the 12th grade and has technical trade school training for electrical work. Claimant is able to read and write, but states she had a hard time with basic math skills due to a head injury.

(7) Claimant states that she last worked in 2003 for 30 days as a restaurant hostess, a job she was let go from because she could not lift trays or perform other duties. Claimant also performed heavy labor work prior to a car accident in year 2000.

(8) Claimant currently lives alone in a house she bought with a law suit settlement from the 2000 car accident that she received in 2004. Claimant receives food stamps and states she also receives help by her mother and her boyfriend.

(9) Claimant alleges as disabling impairments: depression, anxiety, carpel tunnel in both arms, fibromyalgia, spinal injury, and sleep apnea.

CONCLUSIONS OF LAW

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).

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).

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 does 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 testified that she has not worked since year 2003. Claimant is not disqualified from receiving disability at Step 1.

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 a duration of at least 12 months.

Claimant was in a car accident in December, 2000 when her car was struck by a tractor trailer (Department's Exhibit I, p. 5). Initial Evaluation by a doctor who specialized in spine, sports and occupational medicine for date of evaluation of December 27, 2002, states that the

claimant was seen for evaluation of her complaints of neck pain, back pain, numbness in arms and legs, and generalized body pain (Department's Exhibit I, pages 12 and 13). The evaluation cites claimant's car accident and that she had surgery done to her neck in October, 2001 with fusion done at C5-C6 and C6-C7. After these procedures that did not alleviate claimant's pain, she also underwent about eight weeks of physical therapy for her neck and back with no relief of her symptoms, and was additionally seen at a pain clinic. Other treatments consisted of a variety of medications including non-steroidal medications, muscle relaxers, Vicodin, Loricet, Duragesic patches, anti-anxiety medication, and anti-depressants. Claimant was using a TENS unit for her neck and back at the time of this evaluation. Claimant was given a physical therapy prescription.

Medical re-evaluation of January 27, 2003, states as claimant's current diagnosis fibromyalgia (Department's Exhibit I, page 15). Claimant was also given acupuncture treatments 2-3 times per week for fibromyalgic symptoms, as her symptoms did not improve with physical therapy (Department's Exhibit I, page 18).

The MRI of claimant's cervical spine on March 20, 2003, (Department's Exhibit I, page 11), states that she is status post-anterior cervical fusion at the C6/7 level. The height of the remaining vertebral bodies appears normal. There was a mild bulging disc with minimal impression upon the thecal sac, but no impression upon the cervical cord and any central canal or neural foraminal stenosis identified. At C5/6 there was a small right herniated disc causing a mild cord abutment. No flattening of the cervical cord was identified, there was mild central canal stenosis, and no neural foraminal stenosis is identified. At C6/7 there was satisfactory appearance of the cervical spine, and no central canal or neural foraminal stenosis was identified. The cervical cord appeared normal in signal. Impression was that of status post-anterior cervical fusion at the C6/7 level, and a small right paracentral C5/6 herniated disc as described.

Claimant testified that she has had no medical treatments and has not seen any doctors in several years, and is not on any medications at the present time except a TENS unit for pain, as she has no medical insurance and no money to pay for any medical treatment. It is noted that the claimant also testified that she received a \$ [REDACTED] settlement for the injury she suffered in the car accident in 2004, but apparently chose not to use any of these funds for medical treatment, and instead purchased a home with majority of these funds. Therefore, claimant's medical records originally provided by her stop in year 2003.

MRT deferred their decision on claimant's disability and requested an internal medicine exam with narrative, to be arranged and paid for by the department. The exam was performed on July 16, 2008 (Department's Exhibit I, pages 22-25). The exam narrative states that the claimant's condition did not improve after cervical fusion in October, 2002, all movements of the neck are painful and restricted, and pain from the neck radiates down the both arms. Claimant could make a fist, her grip is good in both hands, she is a right-handed person, and she can do buttons, tie and untie shoes, open the door, write legibly, and push and pull. Claimant stated she can do some light household chores and using both hands she can lift less than 5 pounds from the floor and carry it up to a distance of 1-2 feet. Claimant also complained of lower back pain since the year 2000 which radiates down both legs, more so on the left than the right, and that she has pain in the knee and ankle joints. Claimant said she can manage to walk half a block at street level, stand for about 15 minutes and climb six steps, can sit for 20-30 minutes, lies on an air mattress, and coughing and sneezing aggravates the back pain. Claimant can take care of her personal hygiene, can dress and undress most of the time, her joint pain is worse in the damp weather, but has no relation to the time of the day, and she does not use any braces or walking aids.

Physical examination portion of the exam states that the claimant is 5'5" tall, weighs 116 lbs., her blood pressure is 120/80, and her pulse regular. While other examination areas were normal, claimant stood with spine slightly convex to the right and with dropping of the right shoulder. All movements of the cervical spine were restricted and painful. Flexion is 30 degrees, extension 30 degrees, lateral bending 40 degrees and rotation 40 degrees. There is loss of lumbar lordosis and tenderness over the lumbar spine. All movements of the lumbar spine are painful and restricted, flexion to 30 degrees, extension 0 degrees, lateral bending 10 degrees, and rotation 10 degrees. Straight leg raising test is 45 degrees on both sides and claimant complained of pain in the lower part of the back during this procedure.

Flexion of the hip and knee joints caused pain over the lower part of the back, but not in the knee or hip joints itself. There is no pain, swelling, limitation of movements or crepitus in any other joints. Grip is good in both hands (5/5) test manually. Muscle power is good in all the extremities, and there is no wasting of muscles around the joints. Claimant's gait and stance are normal, but she could not walk tiptoe, tandem gait or on the heel, due to pain in the lumbar spine. Claimant cannot squat more than 20%, due to pain and limitation of movement of the lumbar spine.

Claimant was oriented to time, place and person, her speech was normal and memory fairly good, deep tendon reflexes are equal bilaterally, and cerebellar functions and gait normal.

Diagnosis and impression of this exam are status post cervical fusion with claimant having post traumatic osteoarthritis of the cervical spine and lumbar spine, along with the history of fibromyalgia. Claimant has functional limitations orthopedically.

Medical Examination Report of [REDACTED], by a doctor that has never seen the claimant before lists claimant's impairments and current diagnosis which appeared to have been

gathered through interview with her. This doctor states that claimant's condition is deteriorating, she is limited to lifting/carrying less than 10 lbs. 1/3 of 8 hour day, she is limited in her ability to stand, walk or sit but requires no assistive devices for ambulation, and can use both of her hands/arms for repetitive actions as well as operate foot/leg controls with both feet/legs. Report also states that the claimant has severe anxiety and due to this is limited in following simple directions or social interaction. Report states that the claimant can do daily chores in her home.

While there is clinical medical evidence in the record that shows that the claimant does have medical issues connected with her injury, a conclusion that she suffers a severely restrictive physical impairment cannot be reached. Claimant presents herself as being practically immobile due to her spine condition and pain she is in constantly. Medical exam of [REDACTED] acknowledges claimant's orthopedic limitations due to post cervical fusion and post traumatic osteoarthritis of the cervical and lumbar spine. However, this exam also reveals that the claimant has no pain, swelling or limitations of movement or crepitus in any other joints, her grip was good (5/5) in both hands, muscle power was good in all the extremities, there is no wasting of the muscles around the joints, and her gait and stance were normal. Claimant's deep tendon reflexes were 2+ and equal bilaterally. It would appear that if claimant indeed cannot sit for more than a few minutes, stand for a few minutes, and can only walk for 10 steps without stopping to rest as she testified in the hearing, she would have lost much of her muscle strength, and other areas of her body would have been affected by her stated practical immobility. This Administrative Law Judge therefore finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitations. Claimant testified that she suffers from anxiety due to her accident and this is noted in the exam

of [REDACTED] However, the doctor completing the Medical Examination Report, DHS-49, has never seen the claimant prior to this exam. This doctor describes the claimant as suffering from “severe anxiety”, but this conclusion appears to have been based solely on claimant’s reporting of such and her presentation on the day of the exam. Claimant testified that she was in a mental health facility in [REDACTED] due to issues from her accident, however no records of such treatment have been provided by her. Furthermore, claimant has not been in any type of counseling or therapy for her alleged mental condition that she cited. Claimant testified that she drives short distances, interacts with her family on a daily basis and has a boyfriend, so her alleged anxiety is not preventing her from social functioning. The evidentiary record is therefore also insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

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

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would determine that she would not be able to perform past relevant work. Claimant’s past relevant work was doing heavy labor, and her spine condition would prevent her from doing such work again.

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 other 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

This Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 at least sedentary work. Claimant is 36 years of age, has a high school degree, and has attended technical trade school prior to her car accident in year 2000. Under the Medical-Vocational guidelines, a younger individual (age 18-44), that is even illiterate or unable to communicate in English and has only unskilled previous work experience or no work experience at all who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems and the Administrative Law Judge does find claimant's testimony that she suffers from back pain credible, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 sedentary work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 31, 2009

Date Mailed: April 2, 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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