

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: 2009-5106
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2009
Livingston County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on January 13, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

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 April 25, 2008, claimant applied for MA. She submitted medical records for department consideration.
- (2) August 13, 2008, the Medical Review Team (MRT) denied claimant's application.
Department Exhibit A.

(3) August 20, 2008, the department sent claimant written notice that the application was denied. Department Exhibit C.

(4) October 31, 2008, the department received claimant's timely request for hearing.

(5) December 3, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) January 13, 2009, the in-person hearing was held.

(7) Claimant asserts disability based on impairments caused by back and neck injuries, bone spurs, torn ligaments and tendons, heart condition, carpal tunnel syndrome, nerve damage to left foot, hypertension, depression, poor eyesight, and insomnia.

(8) Claimant testified at hearing. She is 52 years old, 5'5" tall, and weighs 148 pounds. She completed 11th grade and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. She cares for her needs at home.

(9) July 22, 2008, claimant underwent an independent psychiatric assessment. A narrative report was prepared that indicates Axis I diagnoses of pain disorder, associated with both psychological factors and general medication conditions, chronic; and major depressive disorder, recurrent, moderate. At exam, claimant appeared in good contact with reality. Motor activity is agitated and claimant states she is in fear of becoming paralyzed. Conversation was spontaneous. Claimant was logical, but at times, speech was pressured by intermittent tearfulness. Claimant is depressed in mood but maintains a friendly demeanor. Affect is somewhat flat. Claimant is oriented x 3. Memory, fund of information, calculation, abstract thinking, and judgment appear to be within normal limits. GAF is assessed at 55. Department Exhibit A, pgs 3-7.

(10) July 23, 2008, claimant was examined by her physician. Treatment notes indicate claimant's cranial nerves 2-12 are grossly intact as tested. Lungs are clear to percussion and auscultation. Heart has regular rate and rhythm without murmur, gallop or click. Abdomen is soft and non-tender with no organs or masses palpable. Bowel sounds are active. No bruits, guarding, or rebound. Gait is stable but favors the left side. Patient is wearing a brace over the left knee. Pulses are full. No edema in the extremities. Deep tendon reflexes appear symmetric and normal throughout. Doctor indicates that claimant reports history of hypertension and purported heart disease. Without further documentation, doctor considers the date of sought at best. Today's evaluation would suggest that on a minimum amount of anti-hypertensive therapy, claimant's blood pressure would be relatively well controlled. Doctor indicates that readings are slightly higher than one would anticipate, however; patient just had a cigarette prior to entering the office and that can influence these findings particularly during first visits. Department Exhibit A, pgs 8-9.

(11) March 20, 2008, claimant presented to emergency room for treatment of left arm and right arm pain. Claimant was examined and claimant underwent 12 lead EKG that indicated normal sinus rhythm at a rate of 72. There is left axis deviation in Q-waves in the septal leads. There are otherwise no inappropriate intervals or evidence of chamber hypertrophy. Claimant's alcohol level on admission was .223. Claimant was released following exam. Department Exhibit A, pgs 17-21.

(12) August 16, 2005, claimant underwent an MRI of the thoracic spine that indicated a stable thoracic spine. Department Exhibit A, pgs 22-23. Also on that date, claimant underwent an MRI of the cervical spine. The prepared report indicates a stable MRI of cervical spine with syrinx at cervicothoracic junction and anterior cervical plate C5 to C7. Department Exhibit A,

pgs 24-25. January 4, 2005, claimant underwent x-rays of the lumbar spine that revealed degenerative disc disease at the lumbosacral junction. Department Exhibit A, pg 26. On or about March 28, 2006, claimant underwent nerve conduction studies and a report was prepared. The report indicates that the study is consistent with a moderate right median neuropathy at the wrist. The left ulnar nerve conduction study is normal. Department Exhibit A, pgs 32-34. On an unknown date prior to June 21, 2001, claimant underwent an anterior cervical fusion from C5 to C7 with metal fusion elements. Department Exhibit A, pg 47. July 13, 2006, claimant underwent nerve conduction studies of her lower extremities and a report was prepared. The report indicates a tibial nerve A-wave detected on the left. This is an abnormal but non-localizing finding that is consistent with the following focal neuropathies: a left S1 radiculopathy (most common) or a left tibial or sciatic nerve lesion. Tibial a-waves have also been found to occur in 5-15 percent of asymptomatic individuals particularly in the elderly. Department Exhibit A, pg 39.

(13) Claimant has not worked in the past 15 years.

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).

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that prior to 2001 claimant underwent a cervical fusion. Since that date, MRI has revealed stable configuration at the cervical thoracic junction. Anterior cervical fusion is stable as well. There is moderately severe stenosis of right C7 neural foramen and nerve root sleeve. Recent physical exam revealed claimant's gait stable but favors the left side. Pulses are full and there is no edema in the extremities. Deep tendon reflexes appear symmetric and normal throughout. Finding of Fact 10-12.

At Step 2, the objective medical evidence of record indicates claimant has an Axis I diagnoses of pain disorder and major depressive disorder, recurrent, moderate. The record indicates that claimant is oriented x 3. Memory, information, calculation, abstract thinking, and judgment appear to be within normal limits. Claimant is logical, but speech is pressure by intermittent tearfulness. Claimant is depressed in mood but maintains a friendly demeanor. Affect is somewhat flat. Finding of Fact 9.

At Step 2 the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant has not been employed in the past 15 years. Accordingly, a Step 4 analysis cannot be completed.

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).

At Step 5, the objective medical evidence of record indicates that claimant is post cervical fusion. She has mild to moderate carpal tunnel syndrome in her right wrist. Claimant has major depression, moderate. GAF is assessed at 55 indicative of moderate symptoms or difficulties. See discussion at Step 2 above. Finding of Fact 9-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least simple light work activities. Considering claimant's Vocational Profile (closely approaching advanced age, limited education and no work history and relying on Vocational Rule 202.10, claimant is not disabled. Accordingly, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 24, 2009

Date Mailed: August 25, 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 receipt 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.

JAB/ db

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