

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: 2009-5944
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 19, 2009
Lenawee 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 19, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her aunt [REDACTED] and her son [REDACTED].

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 September 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 22, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 31, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On November 7, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 22, 2008, the State Hearing Review Team (SHRT) again denied claimant's application stating she is capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational Rule 202.20.

(6) Following the hearing claimant provided additional medical evidence which included an MRI that was already in her record. This evidence was submitted to SHRT for additional review. On April 21, 2009 SHRT once again denied the claimant stating she was capable of performing other work, namely sedentary and light work.

(7) Claimant is a 49 year-old woman whose birth date is [REDACTED]. Claimant is 5'7 1/2" tall and weighs 200 pounds after gaining 50 pounds in the last year due to not being able to walk a lot. Claimant has a high school diploma and can read, write and do basic math.

(8) Claimant states that she last worked in August, 2008 for the [REDACTED] at a concession stand, 2 hours per day, 3-4 days per week, for 4 months during the softball season. Claimant also worked as a bartender and waitress from year 2000 to 2007 for two different employers, job that ended because she had difficulty walking but also because her brother passed away and she moved back home. Claimant was also a head cashier in grocery stores from 1983 to 1997, and worked in a warehouse from 1997 to 2000.

(9) Claimant currently lives rent-free in a house owned by her cousin that is located near her family members. Claimant's family helps her with bills and she also receives a small pension from her ex-husband in addition to food stamps.

(10) Claimant alleges as disabling impairments: back and hip pain making it hard to walk, and acid reflux from the medicines she takes.

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 August, 2008. 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 duration of at least 12 months.

The objective medical evidence on the record includes an x-ray of claimant's hip of [REDACTED] after she complained of hip pain and came to emergency room. Claimant's pelvis and hip were normal, but severe degenerative changes at the lumbosacral junction and lumbar spine were noted and further evaluation recommended (Department's Exhibit I, p. 29).

On [REDACTED] claimant came to see her doctor with complaint of pain in the right hip when she walks. It was noted that the claimant is quite active, does exercises, and has a gliding machine she uses at home. Claimant was diagnosed with greater trochanteric bursitis with tenderness right over the bursa and iliotibial band syndrome. Claimant was given an injection and by the time she left the office, she was already feeling some relief and planned to look up the condition on a computer so she could get some good stretches to do to help relieve the tension of that structure (Department's Exhibit I, p. 28).

Claimant returned to her doctor, a P.A., on [REDACTED] still substantially bothered by right hip pain and low back pain with radiation of pain into the right leg. Claimant was alert, oriented, and in no acute distress at rest, but had moderate tenderness in her low back. Straight leg raises were negative as was the frog legging. Claimant's range of motion was intact. It is noted that claimant's problems are low back related and arthritic in nature. Claimant's job requires a lot of standing and doctor provided a note to the effect that she should be allowed to sit as much as possible (Department's Exhibit I, p. 26).

MRI of claimant's lumbar spine of [REDACTED] shows degenerative changes of the L5/S1 intervertebral disc, with right parasagittal protrusion, but without significant stenosis of the spinal canal or neural foramina at this level (Department's Exhibit I, pages 30 and 31).

Medical Examination Report for an exam of [REDACTED] from a doctor that first saw the claimant on [REDACTED] cites as history of claimant's impairments "hip pain" (actually low back right leg) for over a year and worsening, reaching the point of inability to sit

or stand too long and especially higher pain with any walking. Current diagnosis is low back pain (right sciatica, and disc disease. Claimant was 5'7" tall and weighed 180 pounds, with blood pressure being 120/80. Claimant moved with overt shifting and pain, had moderate palpable tenderness mid line L-2 to S-1, and was overtly upset and developing chronic pain problem. Claimant's condition was listed as deteriorating, she could lift/carry less than 10 lbs. occasionally, stand and/or walk less than 2 hours in an 8-hour work day, and sit less than 6 hours in an 8-hour workday. No assistive devices were medically required and needed for ambulation. Claimant could use both hands for simple grasping and fine manipulating, but could not use them for reaching or pushing/pulling, and could not use either feet/legs for operating foot/leg controls. Claimant was on Flexorol and Darvocet and could meet her needs in the home without assistance (Department's Exhibit I, pages 20 and 210).

Additional medical information provided following the hearing includes a Medical Needs form completed by a P.A. on March 23, 2009. Claimant's diagnosis is again low back pain and right sciatica. Claimant is ambulatory, does not need special transportation, but needs help with dressing and meal preparation. It is noted that the claimant cannot work at any job for 12 months, and that along with pain of sciatica there is some right leg weakness so she uses cane for stability (Department's Exhibit I, p. 32).

Medical Examination Report for an exam of [REDACTED] again completed by a P.A. indicates that the claimant was overtly uncomfortable and ambulating with a cane, unable to cross right leg over left, and very tender in the lower back region. Claimant's condition was listed as deteriorating, she could now not lift/carry any amount of weight, and she needed "some help for comfort" in her home (Department's Exhibit I, pages 33 and 34). P.A. relied on the [REDACTED] MRI to support these findings. Details of this MRI (in addition to above citations) are that overall caliber of the spinal canal is well maintained at the L2/3 level, and the

L2/3 neural foramina do not appear significantly compromised. The L3/4 intervertebral disc has mild bulging/protrusion but the overall caliber of the foramen is well maintained and the spinal canal and left neural foramen are patent at the L3/4 level. The L4/5 intervertebral disc has shallow bulging/protrusion along its right posterolateral margin, but the foramen does not appear severely compromised, and the spinal canal and left neural foramen are patent at the L4/5 level. The L5/S1 intervertebral disc has diminished height and signal intensity, but the overall caliber of the spinal canal is well maintained at this level, and neural foramina do not appear significantly compromised. Lumbar facet joints have mild degenerative change, primarily at the L4/5 level.

Medical opinions provided by the claimant's P.A. and not co-signed by an M.D. or a D.O. appear to present the claimant as practically immobile according to March, 2009 report. This report is based on claimant's report of her condition and on the August, 2008 MRI. The MRI report does not indicate that claimant has back issues that would cause her the extent of constant pain, inability to sit, stand or walk, and inability to take care of her daily needs that she testified to. The Administrative Law Judge is not of the opinion that the claimant is falsely presenting herself, but that medical findings, namely the MRI, do not support the extent of disability described in the P.A. report or by the claimant. It is also noted that the claimant has worked steadily since 1983, including being a bartender and a waitress from year 2000 to 2007, job that appeared to have ended not only because she was having medical issues but also because she moved back to Michigan from another state. Furthermore, claimant worked for 4 months in the summer of 2008, up to August, 2008, part time at a concession stand during the softball season, job that ended about 3 weeks prior to claimant's application for MA and SDA because the softball season ended. While this job was part time, claimant was able to perform it even though it involved extended periods of standing.

While claimant's condition may have indeed drastically deteriorated once she was no longer working, there is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. As already stated, the MRI report of August, 2008 does not provide a basis to conclude that the claimant has such impairment. P.A.'s conclusions are based on that report and claimant's subjective description of her condition. This Administrative Law Judge 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, and claimant testified that she has none. The evidentiary record is 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 trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to evaluate her ability to perform past relevant work. Claimant's past relevant work was being a bartender and a waitress, job she held for 7 years up to 2007, when she moved back to Michigan. Claimant was also a cashier at grocery stores from 1983 to 1997. Claimant testified that she has trouble walking, and if her testimony is given great weight she may not be

able to perform as a bartender or a waitress. Claimant however, also testified that she spends her days watching TV, reading, playing Yatzi game, or going down to her aunt's house to play cards. Claimant therefore engages in activities that involve prolonged sitting, and worked at a concession stand last year where she stood for a period of time, and could very likely perform cashier duties. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability 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 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).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least sedentary and light work if demanded of her. Therefore, 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual (age 49), with even limited education (claimant has a high school diploma) and an unskilled work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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, 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 and light 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: June 10, 2009

Date Mailed: June 11, 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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