

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: 2009-5947
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 19, 2009
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on March 19, 2009. Claimant appeared and testified.

ISSUES

- (1) Did the Department of Human Services properly deny Claimant's application for Medical Assistance (MA) based on disability?
- (2) Did the Department of Human Services properly deny Claimant's application for 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) Claimant is a 38 year-old female. Claimant is 5'3" tall and weighs approximately 156 pounds. Claimant's formal education consists of 9 years of school and she obtained a GED.

(2) Claimant has past relevant work in janitorial and unskilled factory work.

(3) Claimant last worked in September, 2008 as a janitor. Claimant reports she left that employment because she was in constant pain and frequently hears the voices of her dead mother and grandmother.

(4) On September 18, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On October 28, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(6) On November 3, 2008, Claimant was sent notice of the Department's determination.

(7) On November 7, 2008, Claimant submitted a request for hearing.

(8) On December 18, 2008, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

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).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work

activity that is both substantial and gainful. Substantial work activity is work activity that involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant last held employment in September, 2008. Claimant testified that she currently stays at home all day, seldom goes out of the house, engages in the absolute minimum amount of necessary house work, and has no interest in doing anything. Claimant is not engaged in significant physical or mental work activities and does not derive pay or profit from any of her activities. Claimant is not engaged in substantial gainful activity.

STEP 2

At the second step, it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is not severe when medical and other evidence establishes only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based on depression, anxiety, neck strain, and back injury. Evidence in the record from medical sources includes: an emergency department report from [REDACTED] dated [REDACTED]; an emergency department report from [REDACTED] dated [REDACTED]; an emergency department report from [REDACTED] dated [REDACTED]; an emergency

department report from [REDACTED] dated [REDACTED] an emergency department report from [REDACTED] dated [REDACTED] a Medical Needs Form (DHS-54a) and Medical Examination Report (form DHS-49) dated [REDACTED]; and a Mental Residual Functional Capacity Assessment (form DHS-49E) and a Psychiatric/Psychological Examination Report (form DHS-49D) dated [REDACTED].

The [REDACTED], emergency department report shows that Claimant went to the emergency room with a bruise on her left flank and urination pain. The bruise was caused by a fall. Claimant was given medication for the flank pain and for a urinary tract infection. Nothing in this medical evidence constitutes a medically determined severe impairment.

The [REDACTED], emergency department report shows Claimant had an acute soft tissue mass in her right chest. No specific diagnosis was made. Claimant was given pain medication and advised to follow up with her family physician. Nothing in this medical evidence constitutes a medically determined severe impairment.

The [REDACTED], emergency department report shows Claimant went to the emergency room with pain in her back, neck, and shoulder. The report lists an impression of cervical strain, urinary tract infection, and shoulder pain. Claimant was given pain medication and advised to follow up with her family physician. Nothing in this medical evidence constitutes a medically determined severe impairment.

The [REDACTED], emergency department report shows Claimant went to the emergency room with pain in her chest and back. The report lists an impression of acute chest pain, improved. Claimant was given pain medication and advised to follow up with a cardiologist. Nothing in this medical evidence constitutes a medically determined severe impairment.

The [REDACTED], emergency department report shows Claimant went to the emergency room with pain in her head and neck. Claimant reported a fall as the cause of the injury. The report lists impressions of acute cervical neck strain, acute posterior head contusion, and acute low back contusion. Claimant was given pain medication and advised to follow up with her family physician. Nothing in this medical evidence constitutes a medically determined severe impairment.

The Medical Examination Report (form DHS-49) dated [REDACTED], was filled out by [REDACTED]. [REDACTED] has been Claimant's physician for 5 to 6 years. The form gives results from an examination on [REDACTED]. The only abnormal results listed from the examination are mental. [REDACTED] diagnosed Claimant with depression and anxiety. The Doctor marked the form indicating Claimant has no mental limitations. The Doctor also listed some restriction on lifting and carrying. The Doctor gave no medically determined reason for the restriction on lifting and carrying.

The Medical Needs Form (DHS-54a) dated [REDACTED] was filled out by [REDACTED]. [REDACTED] has been Claimant's physician for 5 to 6 years. The Doctor listed Claimant's diagnosis as depression and anxiety. The Doctor marked the form indicating that Claimant can work at her usual occupation and can work at any job with the limitation of no heavy lifting.

The Psychiatric/Psychological Examination Report (form DHS-49D) and Mental Residual Functional Capacity Assessment (form DHS-49E) dated [REDACTED] were filled out by [REDACTED]. [REDACTED] has been Claimant's physician for 5 to 6 years. [REDACTED] submitted a memorandum along with the forms stating he is not a psychiatrist or psychologist but that Claimant stated it was alright for him to fill out the forms so he did so for

her. The forms state that Claimant shows signs of depression and anxiety and does take Xanax. No specific testing was done. The Doctor opined that Claimant “could probably handle a job.” The Doctor indicated that Claimant was moderately limited in several categories.

With regard to mental impairments, the medical source evidence in the record states that Claimant has no mental limitations. Claimant’s family physician with a treatment relation of more than 5 years indicated that Claimant has moderately limited abilities in 11 of 20 specific categories.

With regard to physical impairments Claimant’s family physician with a treatment relation of more than 5 years indicated Claimant has some minor lifting restrictions. No specific diagnosis was listed as the basis of the lifting restriction.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

With regard to mental impairments Claimant’s moderately limited abilities were compared with the Social Security Administration impairment listings 12.04 (Affective Disorders), 12.06 (Anxiety-Related Disorders), and 12.08 (Personality Disorders). Claimant’s limitations did not meet or equal these listings because she has no marked restrictions in activities of daily living, maintaining social functioning, or maintaining concentration, persistence, or pace.

With regard to physical impairments Claimant’s lifting restrictions were compared to Social Security Administration impairment listings 1.02 (active rheumatoid arthritis and other

inflammatory arthritis) and 1.04 (arthritis of one major joint in each of the upper extremities). Claimant's limitations did not meet or equal these listings. Claimant's did not meet or equal these listings because;

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant reports janitorial and unskilled factory work as her past relevant work. On the Medical Needs Form (DHS-54a) [REDACTED] indicated that Claimant should never lift more than 20 pounds and should only lift 10 pounds or less occasionally. On the Mental Residual Functional Capacity Assessment (form DHS-49E) [REDACTED] indicated that Claimant was moderately limited in some areas. On the Psychiatric/Psychological Examination Report (form DHS-49D) [REDACTED] in specifically wrote that "she could probably handle a job given instructions how to do that I think she would do that well. She might get somewhat confused if there were some extra things or jobs added to her present program." It is noted that Claimant was still employed in janitorial work at the time of the Doctor's report. At the same time [REDACTED] [REDACTED] completed a Medical Needs Form (DHS-54a) on Claimant. The Doctor specifically marked the form indicating that Claimant could work at her usual occupation and at any job that did not require heavy lifting.

At this hearing, Claimant specifically asserted she cannot work because she has pain when she moves and she hears the voices of her dead mother and grandmother. There is no

medical information or diagnosis in the record to support these assertions. Statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged (20 CFR 416.929).

The credible evidence in the record shows that Claimant can perform her past relevant work in janitorial services. Claimant is found ineligible at this step.

STEP 5

At the fifth step, your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled.

Claimant is a 39 year-old female with a GED and an unskilled work history. In accordance with 20 CFR 416.967 Claimant's lifting restriction places her in the category of being able to perform light work. Claimant also has some moderate nonexertional limitations as listed on the Mental Residual Functional Capacity Assessment (form DHS-49E) pages 20 & 21. A review of those nonexertional limitations and [REDACTED] written assessment show that Claimant would be capable of performing work that involves a consistent routine such as work in janitorial services. Claimant is considered ineligible at this step because she can adapt to other light unskilled work that involves a standardized routine.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly denied Claimant's application for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/


Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 10, 2009

Date Mailed: August 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.

GFF 

cc: 