

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: 2009-8574  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 24, 2009  
Lenawee 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 March 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) based upon disability?

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 June 25, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance to March 2008.
- (2) On November 12, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 12, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On November 24, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 8, 2009, the State Hearing Review Team again denied claimant's application stating that claimant had a non-severe impairment or condition pursuant to 20 CFR 416.920(c).

(6) The hearing was held on March 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 30, 2009.

(8) On May 11, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work and can perform medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.29. The State Hearing Review Team stated in its comments that the claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing simple, unskilled, medium work.

(9) On the date of hearing, claimant was a 49-year-old woman whose birth date is [REDACTED]. Claimant was 5' 3" tall and weighed 160 pounds. She recently gained 15

pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2001 for [REDACTED] doing laminations. Claimant has worked as a one-on-one aide, as a cafeteria team member and as a part-time specialist on art projects and has worked as a busser, assistant manager and a waitress in a restaurant.

(11) Claimant receives [REDACTED] in RSDI income based upon her adult disabled son.

(12) Claimant alleges as disabling impairments: fibromyalgia, carpal tunnel syndrome, migraines, and confusion.

### 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).

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 2001. Therefore, claimant is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence on the record indicates that a confidential psychological report dated [REDACTED] indicates that claimant has depressive disorder and the results indicated that claimant was experiencing very mild emotional distress characterized by tension. She frequently worries about something. She also experiences a very mild level of dysphoria. Her daily life is full of things that keep her interested and she is happy most of the time. Her concentration skills and memory are adequate. She is self confident. She is extroverted and makes friends quickly. She may tend to worry about her physical health and believes it is not as good as her friends. She reports a variety of physical and neurological symptoms. Her physical symptoms may tend to worsen in response to stress. Her prognosis was guarded and it was determined that she may benefit from participation in mental health services and that she was able to currently manage her own benefits funds. Claimant had a verbal IQ of 95, a performance IQ of 94 and a full scale IQ of 95. A mental residual functional capacity assessment form was completed and it was determined that claimant's understanding and memory does not appear to be significantly limited. Due to the current severity of her depressive and physiological symptoms, she appears to be moderately limited in the following areas: the ability to maintain regular attendance, complete a normal workday and worksheet without interruption from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. (Page 22) Claimant presented with a flat affect and dysphoric mood. She was oriented to time, person and place. She could repeat five numbers forward and three numbers backward and she could recall three out of three objects three minutes later. She stated that the past president was George W. Bush and her date of birth is [REDACTED]. She named five large cities as Lansing, Tallahassee, Madison, Binghamton and St Louis, and current famous people were Anna Nicole Smith, and current events that she just died. She was

able to subtract 7's from 100 by stating 100, 93, 86, 79, 72. She was able to do serial 3's as 3, 6, 9, 12, 15, 18, and 21. She spelled world backwards as dlrow. She added  $4+5=9$ ; multiplied  $4 \times 5 = 20$ ;  $12/4=3$ ;  $8 \times 7 = 56$ ; and  $10-6=4$ . For abstract thinking she said for the "grass is greener" that there are better things on the other side of the fence and for "spilled milk", don't let it get to you. Similarities and differences – how are a tree and bush alike, she stated that they both have branches and leaves and tree is higher up and a bush is closer to the ground. (Page 21) A Medical Examination Report, dated [REDACTED], indicates that on physical examination claimant was an average built lady with a weight of 157.4 pounds and a height of 63". Blood pressure was 122/75, pulse was 82 and regular and respiration was 22 and non-labored. No accessory respiratory muscle activity was noted. Her head was normocephalic. Ear, nose and throat examination was unremarkable. Eye examination revealed sclera non-icteric, pupils were midsize and reactive to light. Fundi were benign without arterial sclerotic narrowing, AV nicking, exudates or hemorrhage. There was no papilledema. Her neck was supple. No evidence of JVD, lymphadenopathy, or carotid bruit. Her chest was symmetrical. Expansion of lungs was equal and symmetrical bilaterally without evidence of rales, rhonchi or wheezing. Her heart examination did not show any murmur or gallop. S1 and S2 were normal. There was no S3, S4 or pericardial rub. Claimant's abdomen was soft, and non-tender. No masses or organomegaly. There was no abdominal bruit. Liver and spleen were not enlarged. There was no ascites. Her extremities had no evidence of pedal edema or phlebitis. Peripheral pulses were bilaterally palpable in the lower extremities. No clubbing or deformity was noted. In the musculoskeletal examination, the examination did not show any acute arthritis, arthropathy, joint swelling or deformity. Claimant could ambulate without assistance, could dress and undress without any difficulty. Heel, toe and tandem walking were normal. Movements at all joints were normal.



Grasp was 4/5 symmetrical bilaterally. Claimant could get on and off the table without any difficulty. Gait was normal and balance was good. Fist formation was normal. The neurological affect was normal. All cranial nerves were intact. Deep tendon reflexes were equal and symmetrical bilaterally and there no muscle atrophy or dystrophy demonstrable. (Pages 7-8) A Medical Examination Report of [REDACTED] indicates that claimant had normal examination areas except that her gait tended to be stiff and careful and she had a flat affect but she was well-kempt. Claimant was 5' 3" tall and weighed 161 pounds. Her blood pressure was 110/70. The clinical impression was that she was deteriorating especially description by claimant of mental confusion at times. Claimant could occasionally lift less than 10 pounds and could stand or walk less than two hours in an eight hour day and sit less than six hours in an eight hour day. Claimant could use both of her upper extremities for simple grasping, reaching and fine manipulating but not pushing and pulling. She could operate foot and leg controls with both feet and legs. Claimant had some mental limitations in terms of her memory and following simple instructions. (New Information, Pages A1-A2)

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 are expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. This Administrative Law Judge cannot give weight to the treating physician's DHS-49 as it is internally inconsistent. The 49 indicates that examination areas are normal, but the clinical impression is that claimant is deteriorating. The form indicates that claimant tends to have a variable gait, tends to be stiff and

antalgic and was unable to sit still and had some discomfort and stiffness. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based on the claimant's reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed/anxious state. The mental residual functional capacity assessment indicates that claimant is oriented to time, person and place, has good reasoning skills, is only moderately limited in the ability to maintain regular attendance, complete a normal day and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For the record, it should be noted that claimant does receive RSDI income because she is the caretaker of a disabled adult child. This Administrative Law Judge finds that claimant must have adequate time, person and place orientation and the ability to manage funds as she is considered the caretaker of an adult disabled child. 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.

Claimant testified on the record that she does have a driver's license and that she drives one to two times per week to the grocery store and back. Claimant testified that she does cook one to two times per week and cooks things like hamburgers and goulash and that she does dishes, dusting and fold laundry and grocery shops two times per month and she needs help with pushing and lifting. Claimant testified that she crochets as a hobby when she is able. She also draws and reads. Claimant testified that she can walk one block, stand for 5 to 10 minutes at a time and can sit for 10 minutes at a time. Claimant testified she is able to shower and dress herself, but can barely squat. Claimant is able to bend at the waist, tie her shoes and touch her toes and that the heaviest weight she can carry is two pounds or her purse. Claimant is right handed and testified that she has carpal tunnel syndrome. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 12 and with medication is an 8. Claimant stated that in a typical day she washes and brushes her teeth, sits down, eats, watches television, lies down and reads a book. She changes position every 10 to 15 minutes. Claimant testified that most of the day she is resting and she's tired because she doesn't sleep well and that she is in bed by 11:00 to 11:30 p.m. Claimant has not been hospitalized in the last year.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work as a part-time specialist doing art projects and as a café team member does not appear to require strenuous physical exertion. There is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to

perform work which she has engaged in in the past. Thus, if claimant had not already been denied at Step 2, she would be denied again 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 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.

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).

Claimant's medical doctor has determined that claimant can do at least sedentary work. Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

Claimant testified on the record that she does have anxiety and depression as well as confusion.

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).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. . Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that she does receive some relief from her pain medication. Therefore,

this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical/psychiatric evidence that she cannot perform light or sedentary work even with her impairments.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The claimant's impairments are non-severe pursuant to Medical-Vocational Rule 20 CFR 416.920(c) and claimant should be able to perform her prior work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: June 3, 2009

Date Mailed: June 4, 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.

LYL/vmc

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