

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: 2009-91
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 13, 2008
Ingham 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, an in-person hearing was held on November 13, 2008. Claimant personally appeared and testified. Claimant was represented at the hearing by [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 March 28, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On June 6, 2008, the Medical Review Team denied claimant's application stating that claimant could perform her prior work.

(3) On June 10, 2008, the department caseworker sent claimant notice that her application was denied.

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

(5) On October 9, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing her past work per 20 CFR 416.920(e), and commented that the claimant retains the residual functional capacity to perform light/sedentary work. Past work was sedentary. The claimant retains the capacity to return to past relevant sedentary work.

(6) The hearing was held on November 13, 2008. 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 January 23, 2009.

(8) On January 27, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work as an administrative assistant which is sedentary.

(9) Claimant is a 49-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 219 pounds. Claimant attended the 11th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked three years ago as a receptionist answering phones and processing ads. Claimant testified she also worked as a private caregiver for [REDACTED]

██████████ as a resident technician working with ex-prisoners, for ██████████ in the kitchen and for ██████████ working with abused children.

(11) Claimant alleges as disabling impairments: lupus, arthropathy, ovarian cysts, headaches, fibromyalgia, diabetes mellitus, irritable bowel syndrome and depression.

CONCLUSIONS OF LAW

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).

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 for approximately three years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates a DHS-49 at page D1 and 2 indicates that in the examination areas claimant has severe fatigue but is normal in all other areas

except musculoskeletal where she has all over pain, and decreased range of motion in her lumbar spine and muscle weakness. Claimant was 63” and 240 pounds and her blood pressure was 110/74 on a [REDACTED] treatment date. Claimant has systemic lupus erythematosus. According to the DHS-49, claimant can stand or walk less than 2 hours in an 8 hour day and can occasionally lift less than 10 pounds. Claimant cannot do repetitive actions such as simple grasping, reaching, pushing and pulling and fine manipulating and cannot operate foot or leg controls with either feet or legs. Claimant is positive for diarrhea, nausea, muscle weakness, severe fatigue and easy bruising. Claimant had no mental limitations. At D4 of the medical reports indicates that claimant did have synovitis in her MPC joints, wrists and ankles bilaterally. She had tenderness to palpation throughout the upper and lower extremities. Her transition movements were slow and stiff. Her gait was normal. A routine contrast CT of the abdomen indicated that claimant had a history of hysterectomy. Her lung bases were unremarkable. The pleural spaces were clear. There may be a small hiatal hernia present. Images through the abdomen show the gallbladder to be surgically absent. On image 16 a note was made of a non-millimeter low attenuation lesion located centrally within the spleen. Becomes decreased in size when compared to the previous study where it measured 1.9 cm. Its appearance is not specific however it may represent a small splenic cyst or hemangioma. The remaining visualized portion of the liver, spleen, adrenal glands, kidneys and pancreas appeared grossly normal. No significant intra-abdominal or retroperitoneal lymphadenopathy is identified. A moderate amount of stool is seen throughout the colon to the level of the rectum. Degenerative changes were noted involving the lumbar spine. Images to the pelvic demonstrate a 5 x 3.8 cm septated complex cystic appearing mass in the right adnexal region possibly representing a complex right ovarian cyst. Previously seen left adnexal masses are no longer visualized. The uterus is surgically

absent. No other new significant pelvic lymphadenopathy or other suspicious pelvic soft tissue masses were seen. Phleboliths are noted within the pelvis. Gas was noted which was in the vagina. The bladder is incompletely distended with urine and when allowed for this appears roughly normal. No free pelvic fluid was seen. No other new abnormalities were seen within the pelvis. (E2) At an [REDACTED] medical appointment, claimant's examination review of decreased range of motion of her neck and spine. She had some paravertebral muscle tightness and tenderness. She has some peripheral joint swelling including her hands, wrists, feet and ankles associated with tenderness as well. Claimant had normal bone density. (D5) At a rheumatology appointment on [REDACTED], claimant had synovitis in her MPC joints, wrists and ankles bilaterally. She had tenderness to palpation throughout the upper and lower extremities. Her transition movements were slow and stiff and her gait was normal. (D4) Claimant had an eye exam and it was determined that claimant had a cataract and surgical treatment is required. (C6) A medical statement of ability to do work related activities indicates that claimant can occasionally lift less than 10 pounds and that she can stand or walk 2 hours in an 8 hour day. She can sit or walk 6 hours in an 8 hour day and she has limited ability to push or pull in the upper and lower extremities. Claimant should never do any climbing or balancing on stairs and she can occasionally kneel, crouch or crawl. Claimant has an unlimited ability to reach in all directions including overhead, do gross manipulation, fingering and unlimited feeling. Claimant has the unlimited ability to see, hear, speak and she would be affected in her environment by temperature extremes only. The DHS-49 in the file indicates that all of the claimant's examination areas are normal except for the abdomen which is tender to light touch diffusely and the musculoskeletal area which is tender to touch in major muscle groups. (A1 and 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 is expected to last for a 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. Although claimant is diagnosed with having lupus, and has reports of pain in multiple areas of her body, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The DHS-49 indicates the examination areas are normal with the exception of musculoskeletal examination area and abdominal area. The notation in the musculoskeletal examination area under description of an abnormal finding state that claimant has tenderness in most areas of her joints in her body. There are no laboratory or x-ray findings listed on the DHS-49. The statement made by claimant's physician that claimant experiences tenderness in her musculature is the only support given for the extreme physical limitations listed on the second page which indicates that claimant cannot lift above 10 pounds or use her upper extremities for repetitive action including even simple grasping. The form indicates that assistive devices are not medically needed or required for ambulation. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant experiences tenderness in her musculature. 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. Although this Administrative Law Judge is aware that lupus is a disease which has flare-ups, claimant has not currently been involved in a flare-up according to the medical reports in the file. 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 that claimant has a severely restrictive physical impairment.

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

There is insufficient objective medical/psychiatric evidence in the record indicating that claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to person, place and time during the hearing. 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.

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 was as an administrative assistant. As an administrative assistant, claimant was not required to use strenuous physical exertion. There is insufficient objective medical evidence in the file upon which this Administrative Law Judge can base a finding that claimant is unable to perform work which she has engaged in for several years as an administrative assistant. In fact, the medical source statement indicates that claimant can sit 6 hours in an 8 hour work day and does retain the ability to use her fine motor skills. Therefore, claimant is disqualified 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 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 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 sedentary tasks if demanded of her. Claimant's prior work was sedentary. Claimant testified on the record that she does have a driver's license and she drives five times a month to doctor's appointments and to church which is about four miles away. Claimant testified that she does cook two times per week and cooks things like baked chicken. Claimant testified that she does clean her room by straightening her bed and sweeping and one time a month she does laundry. Claimant testified that she can walk two blocks, stand for 15 to 30 minutes at a time and sit for 15 to 20 minutes at a time. Claimant testified that she is able to squat but not bend at the waist. Claimant is able to shower and dress herself but not tie her shoes or touch her toes. Claimant testified that she is able to carry 7 to 10 pounds and that she is right

handed and her hands and arms ache and her legs and feet hurt. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 7. Claimant testified that she does have some light sensitivity. Claimant testified that in a typical day she usually gets up at about 2:00 a.m. because she can't sleep and watches TV if her head is not hurting. Claimant testified that she used to love to work on the computer. Claimant testified that she goes to the bathroom and gets into warm water and sits and that helps her. Claimant testified that her body hurts and heat does help. Claimant testified that she goes to sleep and then she goes to doctor's appointments and she gets blood work and that is her whole day. Claimant testified that she gets flare-ups all the time and that in the winter she gets worse.

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 work even with her impairments. 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. 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 evidence that she cannot perform sedentary work even with her impairments.

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 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: February 19, 2009

Date Mailed: February 20, 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.

2009-91/LYL

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

cc:

