

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: 2009-10044
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 15, 2009
Wayne 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 April 15, 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) 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 May 15, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 15, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments are non-severe and non-exertional.

(3) On November 18, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On November 25, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 30, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work and is capable of performing unskilled work per 20 CFR 416.968(a).

(6) Claimant is a 21-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2-1/4" tall and weighs 160 pounds. Claimant graduated from high school and has an Associate's Degree in liberal arts and attends [REDACTED] full-time and is taking 12 credit hours. Claimant testified she is learning disabled in reading.

(7) Claimant is currently working for a daycare 10 hours every two weeks earning [REDACTED] per hour since October 2008. Claimant has also worked at [REDACTED] making ice cream and working the cash register although she stated she was not good at it.

(8) Claimant alleges as disabling impairments: ADHD, learning disability, chronic asthma, Leiden disease, and Blood Factor V as well as hearing loss in the left ear and too much cartilage in the knees. Claimant testified that her asthma is controlled. She usually has two to three attacks per year.

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 even though she does work at a daycare for 10 hours every two weeks as a daycare assistant caregiver. This Administrative Law Judge will not disqualify her at Step 1 although she is engaged in substantial gainful activity; however, she does not work enough hours for it to be considered substantial but she is gainfully employed.

The objective medical evidence on the record indicates that claimant is a 21-year-old Caucasian female who was diagnosed in elementary school with Attention Deficit Hyperactive Disorder and takes Concerta as a medication. Claimant graduated from high school and was accepted to [REDACTED] and obtained an Associate's Degree but it required special help from the [REDACTED] and tutoring. In a report on [REDACTED], claimant was 5' 2" and weighed 145 pounds and her weight was stable. She drove herself to the

psychological exam. She had a normal posture and gait and was dressed in a casual and neat manner with adequate grooming. Her behavior and affect were unremarkable. She was spontaneous, logical and organized enough with normal speech. She had no hallucinations, delusions or related thought pathology observed, reported or suspected. She denied suicide and homicide ideas. Claimant was oriented for time, person, place and purpose. She repeated six numbers forward but could only do two backward after two trials of trying to get her three backward. She repeated only two of three objects after three minutes of interpolated activity. She named Bush as our current president and Clinton was the prior president and our governor was Granholm and she knew her birth date and social security number by memory. She named as five large cities, Detroit, Chicago, New York, L.A. and Miami and three famous living people were Julia Roberts, Meg Ryan and Tom Cruise. Two news events were hurricanes and the train crash in California and she was correct for $11+17$, $24/8$ and 2×8 . Serial sevens were 100, 93, 86, 79, 72, 65, 58, 51, 44, 37, 30, 23, 16, 9, 2. She spelled the word world backwards wrong, dolrw. The translation of the proverb, the grass is always greener on the other side of the fence, is that you always want something that someone else has and it's always better on the other side and the translation of the proverb, don't cry over spilled milk, was don't cry over simple things and don't get stressed out. Similarities and differences, when asked how a bush and tree were alike, they were both plants and for a difference one was big and tall and one had a big trunk. For judgment, if a stamped, addressed and sealed envelope were found on the sidewalk she would put it in the mailbox and if a fire was discovered in a crowded movie theater she would pull the fire alarm and tell someone. Her plans for the future are to be a teacher. Her diagnosis was ADHD, severe without medication and mild with medication, nicotine addiction, learning disorder NOS, but no detectable personality disorder or developmental disability outside the range of learning

disability and her report of allergies and asthma were controlled by medications. Claimant had a GAF of 50 without treatment and a GAF of 60 with treatment made available to her and her prognosis was guarded. (Page 5-13)

Her medical residual functional capacity assessment indicated that claimant is markedly limited in several areas of functioning and moderately limited in some, but not significantly limited in most areas. She was markedly limited in the ability to understand and remember detailed instructions and to carry out detailed instructions or to maintain attention and concentration for extended periods of time but the ratings were based on claimant's history and reported life of special education, on failures at work and education. (Page 16-17)

A physical examination of [REDACTED] indicates that on examination the claimant was alert and cooperative. The claimant was obese. She was not significantly dyspneic. The claimant weighed 171 pounds. Her blood pressure was 110/80. Her height was 5' 2-3/4". Her vision without glasses was 20/20 on the left and 20/20 on the right and 20/20 bilaterally. Clinically, the claimant was not jaundiced. The claimant's gait was normal. The claimant was able to get on and off the examination table. Claimant could raise both arms above her head level. Her HEENT was normocephalic. Her external eye movements were intact. Pupils were equal and regular, reacting to light and accommodation. Her fundus was intact, ENT was benign, neck was supple. No thyromegaly, no venous engorgement. Trachea was central. No carotid bruit. In her chest, the chest moved normally on either side. Respiratory movements were normal. The chest was clear to auscultation and percussion. No rhonchi or rales noted. In her cardiovascular, her heart size was normal. No audible murmur. JVD was not raised. Air entry was equal. No adventitious sounds. Her trachea was midline. Her abdomen was soft and there were no masses felt. Bowel sounds were normal. No evidence of hernia. Spleen was no palpable.

No ascites. Her bones and joints, straight leg raise was equal bilaterally. All peripheral pulses were equal and good bilaterally. There was no wasting of muscles. Hand grip was equal. In her nervous system, her cranial nerves 2 through 12 were grossly intact. No gouty deformities or nodules noted. Sensory: touch, pinprick and sensation were normal. Plantar reflexes were flexor bilaterally. Cerebellar function was normal. Motor strength was equal bilaterally. The deep tendon reflexes were 2+ in the upper and lower extremities. Heel to toe and finger to finger, fingers and nose testing was normal. The gait was normal. No wasting of muscles. Speech and memory appeared to be normal. Orientation was normal. The claimant's general health was good. No leg ulcers. (Page 18 and 19)

The Medical Examination Report in the file indicates that claimant was normal in all examination areas except she had an occasional wheeze in her respiratory and she had hyperactive in her mental status. Claimant's condition was stable and she had no physical limitations. Claimant mental limitations were that she had some comprehension, memory, sustained concentration and reading and writing problems and she had the inability to multi-task and concentrate. (Page 63 and 64)

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 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 no physical impairments and has no limits on her ability to walk, stand or sit. Claimant is able to shower and dress herself, squat, bend at the waist, tie her shoes and touch her toes and the heaviest weight she can carry is 30 to 40 pounds. Claimant is right handed and there is nothing wrong with her hands and arms. Claimant does have some problems with her knees but basically those

conditions are non-severe. Claimant's level of pain on a scale from 1 to 10 without medication is a 7 and with medication is a 3. Claimant does take care of a children's daycare from infant to school age children who are about twelve years old. Claimant testified that in a typical day she takes a shower, walks to school, goes to work and hangs out at her dorm. Claimant does live at the dorm and is able to get through her days for full-time classes and her job at the daycare. There is insufficient objective medical evidence in the record indicating claimant suffers a severely restrictive physical or mental limitation resulting from her ADHD or learning disability. The evidentiary record is insufficient to find that 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 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 currently works as a daycare provider. She is in college studying to be a teacher. There is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which she is currently engaged in and has engaged in in the past. Therefore, 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).

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).

Claimant has submitted insufficient objective medical/psychiatric 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 medium, 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 medium, light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment of combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform medium, light or sedentary work.

Claimant testified on the record that she does have ADHD and a learning disability.

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 is able to hold her job as a daycare provider and also is able to go to school full-time even though she does require some assistance because she had special education during grade school. Claimant was oriented to time, person and place during the

hearing and was able to answer all the questions and was responsive to the questions. 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 medium, light or sedentary work even with her impairments. Under the Medical-Vocational a younger individual (age 21), with a more than high school education and an unskilled work history who is limited to medium or light work is not considered disabled.

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. Claimant's involvement with Michigan Rehabilitation Services is a separate issue.

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 State Disability Assistance benefits based upon disability. The claimant is

currently working. The claimant should be able to perform a wide range of medium, light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence. The Social Security Administration did deny claimant's application for disability medical assistance.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: May 6, 2009

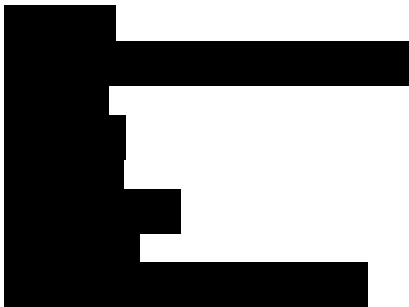
Date Mailed: May 8, 2009

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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