

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: 2009-10911
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 28, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on May 28, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On September 30, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 16, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 22, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 11, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 14, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating that claimant has a non-severe impairment/condition per 20 CFR 416.920 (c). SHRT additionally cited that Drug and Alcohol Abuse is material per 20 CFR 416.935.

(6) Claimant is a 37 year-old woman who is 5'5" tall and weighs 174 lbs. after gaining 20 lbs. in the last year due to alcohol abuse. Claimant attended 9th grade, dropped out of school at 16 years of age because she started using drugs, and has no GED. Claimant can read and write "a little bit", and can only do very basic math.

(7) Claimant states that she last worked in 2004 as a cashier at [REDACTED] for 2 months, job she quit after her husband was fired. Claimant also worked at [REDACTED] in 1999 for a few months, job she quit due to a bleeding ulcer.

(8) Claimant currently lives with her boyfriend who is on disability and pays the rent. Claimant has a driver's license but no longer drives as her car was wrecked in an accident after she let a friend drive because she was drunk.

(9) Claimant smokes 2 packs of cigarettes per day, drinks on the average of 4 beers per day, but has quit using crack cocaine in 2005.

(10) Claimant alleges as disabling impairments heart murmur, COPD, sleep apnea, bipolar disorder, depression, and back problems.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is

reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2004. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". 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 establish 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 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes numerous reports of emergency room visits, majority of which reveal that the claimant was intoxicated.

Claimant was given Patient Discharge Instructions in May, 2006 after being seen at the hospital for alcohol intoxication and being off her psych. meds. These instructions state that claimant’s exam shows that she has a problem with alcohol intoxication, and that her symptoms are caused by alcohol withdrawal. Such symptoms are listed as shakiness, sweating, insomnia, nausea, vomiting, fearfulness, hallucinations, and seizures. Furthermore, one may experience other problems including dehydration, stomach irritation, intestinal bleeding, low blood sugar, and liver and pancreas diseases.

On [REDACTED], claimant was seen for an abscess on the back of her neck and was again intoxicated.

On [REDACTED], claimant was again intoxicated and left at the hospital by her boyfriend who then left because he was intoxicated too. Claimant stated she wants to kill herself, but that she had not taken anything or done anything to hurt herself. After admission claimant stated that she just said she wanted to kill herself because she was upset. Claimant also stated she has family problems and had not taken any of her medications for a week, but admitted to having a “couple of beers” on this day. Claimant denied a referral to inpatient substance treatment and said she will pursue treatment later. It was noted that there was no evidence that the claimant was danger to herself at present.

On [REDACTED], EMS found the claimant lying on the ground intoxicated. Claimant had strong ETOH odor and slurred speech, but no evidence of trauma.

Clinical Report from the emergency department of [REDACTED], states that the claimant was seen for abdominal pain. It was noted that claimant had ran out of her medications, Seroquel, Depakote, Vistaril, Vicodin and Zoloft, couple of months ago. Claimant stated she drinks 3-4 40oz. beers and liquor daily. Claimant appeared in no acute distress or in pain. 4 hours later claimant started reported pain level as 9/10, was given a morphine IV, and within less than 2 hours left ER to smoke. Claimant was then released in improved and stable condition.

May, 2008 note states that the claimant called 911 stating she was going to kill herself and has a large knife, and also said she had cuts on her arms and was off her meds. Police came to claimant's residence and found no fresh wounds on her arms. Claimant then stated she was lonely and just wanted to talk to someone. Claimant was taken to the emergency room and it was noted that her blood alcohol level per PBT was 0.239. Blood test revealed alcohol level of 0.268. Claimant was disoriented and her mood/affect appeared abnormal. Claimant reported that bugs are crawling all over her and said "give me a 40 ounce to make the bugs stop crawling on me". It is noted that the claimant had been involved in numerous inpatient and outpatient substance abuse treatment programs in another county. Claimant was not receiving any outpatient treatment currently and had not seen a therapist since May 2007, missing appointments in June, September and October, 2007. Claimant never followed through for case management services either. Claimant was non-compliant with medication.

On [REDACTED], a Petition/Application for Hospitalization was prepared for the local court. Petition was accompanied by a Clinical Certificate stating that the claimant is mentally ill

and has alcoholism and other drug dependence. Claimant's diagnosis was bipolar (by history), schizoaffective D/O Bipolar Type, ETOH dependence, and Cannabis/Cocaine Abuse.

[REDACTED], chest x-ray for claimant's complaint of shortness of breath reveals clear lungs with no effusions, normal hearth, and no abnormality is seen. [REDACTED], x-ray of claimant's cervical spine for complaint of pain indicates normal cervical spine.

Psychological Evaluation of the claimant was performed on [REDACTED], upon referral from DHS. Claimant reported she has lots of medical problems, including GERD, COPD, a heart murmur, and bad back from being "beaten by a lot of men". Claimant further reported a long history of using alcohol, marijuana and crack cocaine she abused for many years. Claimant stated she has not used any crack in three years, but still drinks "real bad", cannot stop drinking, and drinks every day. Claimant's tests results showed her to be functioning within the Extremely Low range of intelligence, but she did not make a good effort during the evaluation and would simply stop doing things saying she did not want to. Test results therefore most likely to not represent claimant's actual cognitive capabilities. Claimant did not exhibit evidence of illogical, bizarre or circumstantial ideation, and no evidence of a thought disorder was seen. Claimant was oriented to time, place and person, she did not exhibit evidence of hallucinations, delusions, or obsessions, but did indicate she has persistent suicidal ideation.

Claimant's diagnosis is that of Alcohol Dependence, Chronic and Severe, Cocaine Dependence, Possibly in Remission, Depressive Disorder, Borderline Personality Disorder, and a current GAF of 45. It was noted that the claimant's prognosis is poor, she is in need of intensive psychiatric care and ongoing intensive substance abuse treatment.

Chest x-ray of [REDACTED], for complaints of chest pain was normal, and no acute lung process is seen.

On [REDACTED], claimant was brought to the emergency room after being unable to fall asleep and taking friend's Ambien pills. Claimant is not diabetic or suicidal. Claimant is smoking 1 pack of cigarettes per day, drinks on the average of about 4 cans of beer per day, and last used crack cocaine 4 weeks ago.

Claimant's hearing testimony is that she smokes 2 packs of cigarettes per day, drinks 4 beers per day on the average, and that she last smoked crack cocaine in 2005, which is contradictory to what she stated during her emergency room visit in May, 2009. Claimant's mother testified that the claimant cannot hold a job due to drinking, and that she prefers to party and drink instead of work.

Review of claimant's medical records shows that just about every time she had been treated in the emergency room she was considerably intoxicated. The records show that the claimant had stomach pains, but they appeared to have been caused from alcohol use/withdrawal. Claimant has occasional chest pains, but her chest x-rays are normal. Claimant states she has sleep apnea and COPD, but smokes 2 packs of cigarettes per day and appears to be still smoking crack cocaine, both habits that would cause her to have breathing problems. Claimant's mental problems and bizarre behavior she has exhibited all appear to manifest themselves while the claimant is drunk, so it is difficult to discern if she indeed would have such mental issues if she was to stop drinking. Claimant's record shows that she does not take psychiatric medications prescribed to her, that she does not keep appointments with mental health professionals, and that she refused to be taken to substance abuse treatment facility.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the

medical record combined with the hearing testimony is insufficient to establish that claimant has a severely restrictive physical impairment.

The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's sporadic past relevant work was doing simple labor jobs and also working as a cashier. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least medium work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform sedentary, light and medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is age 37), with limited education and an unskilled or no work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.25.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive

State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

In claimant's case, even if she met the disability criteria, a conclusion that her physical and/or mental limitations would not remain if she stopped using alcohol and drugs could be reached at this time, based on the medical evidence provided.

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, light and medium work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 27, 2009

Date Mailed: October 30, 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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