

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: 2009-11752

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 23, 2009

Ionia 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 April 23, 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 October 23, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 11, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 17, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 23, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 13, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant is capable of performing other work, namely sedentary work per Vocational Rule 201.21.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for additional review. On May 19, 2009, SHRT once again determined that the claimant is capable of performing unskilled sedentary work.

(7) Claimant is a 46 year-old woman whose birth date is [REDACTED] Claimant is 5'8" tall and weighs 182 pounds, after gaining 20 lbs. due to medications she takes. Claimant has a GED and medical assistant and phlebotomy training. Claimant can read, write and do basic math.

(8) Claimant states that she last worked in October, 2008 at a local business hanging auto parts and sorting and moving pallets, temporary job that lasted her for 3 months. Claimant has also worked at a local bowling alley managing the kitchen and as a cook and a waitress for 6 months from the end of 2007 to middle of 2008, job she quit because she was being taken advantage of in work hours and pay. Claimant has been a cook and a waitress for the past 20 years.

(9) Claimant rents an apartment and receives Unemployment Compensation Benefits (UCB), and is currently on a 1st extension of such benefits.

(10) Claimant alleges as disabling impairments emphysema, COPD, spinal stenosis, degenerative disc disease, osteoporosis, diabetes, and possible border line personality disorder.

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 she has not worked since October, 2008. Claimant is not disqualified from receiving disability at Step 1. It is noted that the claimant is receiving UCB, benefits one cannot receive if they claim they have a disability that prevents them from being employable.

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 duration of at least 12 months.

Claimant was denied for Social Security disability benefits on October 27, 2006. This denial cites the claimant as having back problems for which she has had surgical intervention and she is maintained on medications. Claimant listed COPD, but this condition does not appear to limit her abilities as she is able to continue to smoke while she is employed. Claimant also stated she was depressed, but after review of her mental health treating records it was found that her substance abuse exacerbated these mental health conditions. (Department's Exhibit I, page 1). Claimant testified that she had an SSA hearing on this denial in February, 2009 and was waiting on a decision.

The objective medical evidence on the record includes an independent medical evaluation of November, 2006, stating that the claimant was hit by a car in May, 2005 while crossing a street, and underwent a lumbar laminectomy with disc excision on [REDACTED]. X-rays of claimant's right and left knee performed due to her complaints of joint pain of [REDACTED] were negative. (Department's Exhibit I, pages 57 and 58). X-ray of claimant's chest based on her complaints of malaise and fatigue of [REDACTED], was unremarkable, and postoperative changes at the lower cervical spine were incidentally noted. (Department's Exhibit I, page 82). Bone density scan of [REDACTED], revealed osteopenia. (Department's Exhibit I, pages 80 and 81). X-ray of claimant's left shoulder due to injury and pain of [REDACTED] was negative. (Department's Exhibit I, page 78). X-ray of claimant's cervical spine due to complaint of pain of [REDACTED] revealed post surgical changes with no evidence of an acute process. (Department's Exhibit I, page 79).

Medical Examination Report of [REDACTED] states that the claimant has diabetes, COPD, hypertension, spinal stenosis and osteopenia. Claimant is limited to lifting less than 10 lbs. occasionally, standing/walking less than 2 hours in an 8-hour workday, and sitting less than 6 hours in an 8-hour workday. Claimant can only use her hands/arms for simple grasping and cannot perform any other repetitive actions, but can use both of her feet/legs for operating foot/leg controls. Claimant has no mental limitations and can meet her needs in the home without assistance. (Department's Exhibit I, pages 26 and 27). Same doctor completed a Medical Needs form stating that the claimant cannot work at any job and needs assistance with housework. (Department's Exhibit I, page 28).

Records of doctor visits from February, 2008 to June, 2008 show claimant receiving refills of Oxycontin on a monthly basis for complaints of pain. In July, 2008 claimant tested positive for marijuana.

[REDACTED] medical report from a pain management center cites the claimant as complaining of neck and arm pain. Claimant had neck surgery in February, 2008 and lumbar surgery in 2007. Claimant stated she was in constant pain that affects her sleep, physical activity, appetite, emotions and concentration, and has tried Oxycodone, Vicodin and Robaxin, but all of them are no longer effective. It is noted that claimant's family physician stopped writing her narcotics due to the fact that there was marijuana in her urine drug screen. Claimant has a history of substance abuse, crack addiction five years ago, and alcohol abuse going to AA 14 to 15 times a week. Claimant continues to use marijuana and smokes one pack of cigarettes per day, but has not used alcohol for a year. On physical examination claimant was alert and oriented, in moderate to severe distress because of her pain, and 5'8" and 165 pounds. Neck and upper extremities rotation left increases claimant's arm pain. Extension and rotation right causes

pressure in her neck, sensory exam is diminished C6-C7 on the left, motor exam is diminished C6 on the left, toes are downgoing and negative clonus, and there is positive tenderness over the C2-C3 region in the cervical spine.

CAT scan of claimant's cervical spine shows post-surgical changes and bilateral foraminal encroachment at C4-5. An MRI of the cervical spine dated [REDACTED] shows postoperative changes related to a fusion. There is a small central disc herniation, and possibility of an infection in claimant's neck for which a 3-phase nuclear medicine bone scan was performed on [REDACTED]. The scan flow imaging did not show any focal abnormality or asymmetry. No evidence of infection was found, but claimant did have degenerative changes of the facet joint.

Claimant also provided records of her visits to Community Mental Health. Intake Assessment of [REDACTED], quotes the claimant as saying she was currently employed at [REDACTED] and at an RV detailing store. Claimant reported being on probation until 2007 secondary to domestic violence charges, but no longer having dealings with the legal system. Claimant did state she has back pain on a regular basis and this at times interferes with her work activities. Claimant was on Oxycodone and Cellabrex for pain, smoked pack of cigarettes per day, drank beer once per month and only 1-2 beers with date of last use being June, 2008, used marijuana weekly one per day, and had past history of crack cocaine and heroin use that ended in July, 2004. Diagnostic Impressions were depressive-like behavior: increased times of sadness, isolation and reportedly "shuts down", anxious behavior based on panic attacks described by the claimant, substance use/abuse, but no psychosis, changes in biological functioning, or motor activity. Claimant appeared in mild distress, was clean, had normal posture, unremarkable mannerisms, maintained eye contact, had normal/appropriate affect, her thoughts and feelings

were appropriate to content, she was cooperative, her speech was clear/articulate, insight and judgment fair, memory good, and she was no current danger to self or others.

Claimant was referred for group therapy in December, 2008, due to her mood disturbances being sufficiently severe and causing marked impairment in occupational functioning, including social activities and relationships.

Psychiatric Evaluation of [REDACTED], quotes the claimant as saying that she has a long history of anxiety and depression but has received a number of different psychiatric diagnoses and is confused about what is actually wrong with her. This was claimant's first visit. Claimant stated that she suffers from anxiety and depression but then said that her chief problems are, in fact, irritability and anger. Claimant describes what appears to be hour-to-hour and perhaps minute-to-minute mood fluctuations, which could possibly be more accurately, described as affected instability as opposed to true changes in mood states. Claimant's history is far from typical and is difficult to interpret given that she is using cannabis on a nearly daily basis. Claimant has never been psychiatrically hospitalized, but has received outpatient services at CMH since the mid 2000s intermittently. Claimant also had inpatient substance abuse treatments in 1999 and 2003 for cocaine dependence, and has been successful in avoiding cocaine for several years at this point. Claimant has no history of any suicide attempts, and she also denies any significant suicidal ideation. Psychiatrist agreed with the claimant in that there would be some confusion over her diagnosis, as he is also not certain what her diagnosis is exactly. There are elements of several different disorders, including anxiety disorder, mood disorder, ADHD, substance abuse disorders, and possibly personality disorder as well. It makes it very difficult to sort out what might be due to what, and claimant's continued use of cannabis certainly complicates the situation. It was recommended that the claimant, even though she finds

the cannabis to be the only thing that “settles me down”, that it contributes to the confusion of what her true diagnoses may be, and that she should abstain from cannabis abuse to help with improving her diagnostic accuracy and specificity.

Claimant was again seen by the psychiatrist on [REDACTED] for medication review, and reported that while the increase in Seroquel was helpful, she continues to have issues with anger. Claimant continues to use marijuana “not that often”, and denies any other substance use. Claimant was neatly dressed, her hygiene was good, she was alert and oriented throughout the appointment and retained good focus, there were no signs of hyperactivity, and her speech was spontaneous, organized, and goal-directed, of normal flow and rate. There was no mood liability or irritability, and there were no signs of depressive themes, suicidal ideation, or suicidal references. The importance of therapy was discussed with the claimant, and she will continue on medications.

Claimant’s treating physician gave her less than sedentary work restrictions based on her physical impairments in October, 2008. However, claimant was working at that time in a labor type temporary job, and has continued to receive UCB based on her apparent claim that she is able to and available for employment. Therefore, treating physician’s restrictions cannot be given sufficient weight to decide that the claimant suffers a severely restrictive physical impairment. In addition, there is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant testified that she drives, goes grocery shopping every other week, does basic housekeeping, does some outside work by sitting on the ground and planting flowers, reads a lot, crochets, uses the computer, and walks to AA meetings 2-3 times per day, weather permitting, ½ block away from her house. Claimant also testified that she is in daily pain which increases with physical activities, but she currently

takes no medication for it. While the claimant states she has emphysema and COPD she continues to smoke a pack of cigarettes per day. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about her physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation. Claimant was in treatment for crack cocaine addiction in the past. Claimant is currently using marijuana and the psychiatric exam report she submitted indicates that her issues with anger, etc. may be connected to such use. 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 past relevant work includes managing a bowling alley for 6 months up to May, 2008, and being a cook and a waitress there. Claimant quit this job because she felt she was being taken advantage of, not because of medical problems, according to her hearing testimony.

Furthermore, claimant also worked in a temporary labor job assignment up to October, 2008, and is currently receiving UCB. Medical evidence presented does not show any event that may have caused the claimant's physical or mental condition to deteriorate since October, 2008 to the point that she is unable to perform her past jobs. 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 the very least sedentary 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 at least sedentary work, and quite possibly light and medium work.

Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 46), with even limited education (claimant has a GED and is literate) and an unskilled work history

who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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.

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 and light work, and possibly 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: June 30, 2009

Date Mailed: July 2, 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.

IR 

cc: 