

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: 2009-13544
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2009
Kent 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 19, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was [REDACTED], Clinical Supervisor Therapist, [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 February 29, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 2, 2009, the Medical Review Team denied claimant's application stating that she had a non-exertional impairment.

(3) On January 6, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On January 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 10, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating she was capable of performing other work, namely unskilled light work per Vocational rule 202.20. SHRT also stated that Drug and Alcohol Abuse is material per 20 CFR 416.935.

(6) Claimant submitted additional medical evidence following the hearing that was forwarded to SHRT for review. On October 7, 2009, SHRT once again determined that the claimant was capable of performing other work, and did not change their March 10, 2009 decision.

(7) Claimant is a 47 year-old woman who is 5'6" tall and weighs 220 lbs. Claimant completed 12th grade and 2 ½ years of college training as a legal secretary. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in 2000 or 2001 as a cashier at a grocery store, job she quit after about 6 months. Prior to year 2000 claimant was a cashier and worked in a bank in California in the 1980's. Claimant has been homeless for the last 5 years staying here and there with relatives and friends giving her money, but is now living alone in an apartment subsidized by Section 8.

(9) Claimant alleges as disabling impairments bipolar disorder, schizophrenia, depression, hypertension, back and shoulder pain, and a recently diagnosed PTSD.

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 year 2000. 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 a Medical Examination Report for an exam of [REDACTED], for complaints of elevated blood pressure for the last year, indigestion, low back pain that radiates to left buttock and thigh, and heavy menses. Diagnosis is that of uncontrolled hypertension questionable if complaint for treatment, bipolar disorder, GERD, and back pain/shoulder pain. All of claimant's examination areas are checked as normal. She is limited to lifting/carrying up to 10 lbs. frequently, and up to 25 lbs. occasionally. Claimant could stand and/or walk and sit about 6 hours in an 8-hour workday. Claimant could use both of her hands/arms for repetitive action, as well as operate foot/leg controls with both feet/legs. While the doctor checked that the claimant has no mental limitations, it is noted that the claimant has "mental illness" and may benefit from [REDACTED] evaluation.

Medical Needs form completed by the same doctor on [REDACTED], indicates that the claimant can work at any job with limitations of lifting less than 20 lbs. and no repetitive bending. It is noted that the claimant may have limitations per mental illness.

Psychological Evaluation of [REDACTED], upon a referral from DHS quotes the claimant as saying that, while she had jobs that she liked and that were a positive experience for her, she has not worked since 2000 and is unable to detail why except that she is afraid she would fail. Claimant described an abusive childhood and an abusive 11 year-old relationship that included rather severe drug abuse and that produced three children. Claimant reported having problems with anger control, depression, and a long history of a sense of hearing hallucinations. Claimant however had not had psychiatric treatment until the last two years, since the age of 45. Prior to that, she had a rather extensive history of substance abuse, which was mostly devoted to cocaine. Claimant reported still using cocaine at frequency of once per

month, had difficulty describing why, but she is unable to overcome the suggestion by others that she use it apparently. Claimant estimates that she has been in four or five residential type programs for treatment abuse with varying success, but has never had a prior psychiatric hospitalization. Claimant was on Seroquel currently and receiving psychiatric services at [REDACTED] weekly and the medication has calmed her down.

Claimant was appropriately groomed for the evaluation and was very compliant through it. Claimant would not be described as having accelerated or pressured thoughts, and while she was emotional at the onset of the evaluation, she became calmer as evaluation progresses. Claimant's remote memory is intact, and she is coherent with intact logic.

Claimant lives in her own apartment, takes her medication, makes her own dinner, cleans her own apartment, and does all domestic chores. Claimant also goes to the food pantry and brings food home, and takes it to her daughter's. She states that she knows how to pay bills.

Claimant's diagnosis is that of depression, recurrent, severe with mood congruent psychotic features, and current GAF of 55. Examiner recommends supervision of any funds claimant would receive, as receipt of such funds by the claimant could lead to a risk of drug abuse or relapse. It is not recommended that the claimant be on permanent disability, as her most improved status in life has been when she has been in the surround of others who are stable and she is productive with work status. Cocaine abuse can rapidly accelerate and destabilize claimant's status, and this needs to be monitored.

Additional medical records provided by the claimant following the hearing are emergency room visits reports starting in 2002 for various issues, eye pain from a bite, lower back pain from running and trying to catch a puppy, lower back pain after playing with a puppy, shoulder pain, foot pain due to frostnip to the feet when she was walking in the snow while intoxicated, left leg pain, and back and neck pain. On [REDACTED] claimant was treated for

left knee pain from a car accident she was in the previous month. Claimant was in no apparent distress, examination of her left lower leg showed no signs of obvious bony fracture or deformity, and there was very minimal swelling in the knee joint. Claimant had intact full range of motions and there was no reproducible pain when her lumbar spine was palpitated. On [REDACTED] [REDACTED] claimant was treated for pneumonia.

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 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. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. Psychological Evaluation of November, 2008 indicates that the claimant has mental issues but that her medication is helping her. Claimant admitted to using crack cocaine once per month to the psychologist and at the hearing. Claimant's long history of severe drug abuse is cited in the psychological report, and the extent of her current drug abuse cannot be established for certain. Therefore, any mental issues claimant may be having could be also caused by her continued drug abuse. It is also noted that no records from [REDACTED] were provided even though the claimant is allegedly seen there on a weekly basis. Therapist from [REDACTED] Innovaire testified that the claimant needs skills to manage her psychiatric state, that she has hard time staying focused, arriving to sessions, and riding buses, and that she is being worked with closely. These issues could again be caused by claimant's continued drug abuse, and it is unknown why records of her treatment from [REDACTED] were not provided to substantiate mental issues cited at the hearing. For these reasons, this Administrative Law Judge

finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his 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 was doing being a cashier. Claimant's psychological evaluation of November, 2008 cites other jobs claimant held in the past, and quotes the claimant as saying she does not know why she has not worked since year 2000. Medical information does not establish that the claimant has severe physical limitations that would prevent her from doing clerical type jobs or simple labor 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 least sedentary and light 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 and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 47), with high school education or more and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

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 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 14, 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.

IR [REDACTED]

cc:

[REDACTED]