

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: 2009-14416

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 2, 2009

Macomb 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 June 2, 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 April 3, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 21, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 6, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On January 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 6, 2009, the State Hearing Review Team again denied claimant's application stating that claimant had a non-severe impairment/condition per 20 CFR 416.920(c) and that drug and alcohol abuse was material per 20 CFR 416.935 and commented that the claimant has a diagnosis of chronic alcoholism. She had possible neuropathy secondary to chronic alcoholism. Her bilirubin was within normal limits.

(6) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 150 pounds. Claimant recently gained 25 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked approximately five years before the hearing as a ferry boat deck hand person. Claimant also worked at the [REDACTED] in the insurance department.

(8) Claimant alleges as disabling impairments: cardio obstructive pulmonary disease (COPD), cirrhosis of the liver, vertigo, peripheral vascular disease, neuropathy, hepatic encephalopathy, heavy vaginal bleeding, hypertension, rheumatoid arthritis, multiple sclerosis as well as pain and numbness in her feet and legs.

CONCLUSIONS OF LAW

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

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

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

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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

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

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

...Medical reports should include –

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

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

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

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

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

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

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

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

At Step 1, claimant is not engaged in substantial gainful activity and has not worked in approximately five years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] report indicates that claimant had a physical examination and at that time she was 49 years old and her height was 64-1/2" without shoes. Her weight was 151 pounds and her blood pressure was 116/72. Her pulse was 78 BPM, regular and her respiratory was 25, regular

and her temperature was 98 degrees Fahrenheit. Her vision with glasses in the right eye was 20/25 and in the left eye was 20/40. HEENT: sclera/PERLA was normal. Vision was fair without glasses. Fundi were normal. Ears were clear. Hearing was normal. The neck was supple. Thyroid was not enlarged. JVP was normal. Carotid arterial pulsations were normal. No carotid bruit. No lymphadenopathy. CVS: PMI was normal in position. Heart sounds were normal. No palpable thrill. No murmur or gallop rhythm. In the chest the claimant was comfortable on sitting and supine position. Accessory muscles of respiration were not working. There was no cyanosis. Trachea was central. Chest expansion was normal. No tenderness over the anterior chest wall. Percussion note was resonant. Cardiac and liver dullness were not obliterated. Breath sounds were vesicular with no adventitious sounds. Vocal fremitus and resonance were normal. Abdomen was soft. No organomegaly. No tenderness. Bowel sounds were normal. Rectal examination was deferred. Her skin had no scars, no rash or pigmentation. Extremities: no clubbing, cyanosis, edema or varicose veins. Peripheral pulsations were not well palpable in the lower extremities except right PT 1+. Left foot was cold and her right foot was warm. No femoral bruit. In the spine claimant could stand without support. No loss of cervical or lumbar lordosis. No tenderness over spine. All movements of the lumbar spine were pain free and of normal range. SLR was 90 degrees on both sides with no complaint of pain over lower back. In the bones and joints there was no pain, swelling, limitation of movements, or crepitus in any joint. No wasting of the muscles around the joints. Grip was good (5/5) in both hands tested manually. Claimant ambulated fairly well without any walking aid. Claimant could not walk tiptoe, on the heel or tandem gait because she was wobbly. She could not squat more than 50% due to loss of balance. She could arise from a squatting position. She could get up from a supine position, on and off the examination table without help. Can dress, undress and open doors. No

loss of dexterity of movement of the fingers. In the nervous system the higher functions, cranial nerves, and cerebellar functions were normal. Power was normal all over except there was mild weakness of the flexors of the thigh on both sides (4/5) tested manually. Deep reflexes and superficial reflexes were normal. Gait as mentioned in the bones and joints. There was impaired touch, pinprick and vibration sensation over both legs, knees downward. (Page 4) The diagnosis and impression was chronic alcoholism and there was no clinical evidence of hepatitis or cirrhosis of the liver. She had a slight loss of balance possibly secondary to peripheral neuropathy. She may have had motor neuropathy secondary to chronic alcoholism. She had osteoarthritis of the knee joint with no functional limitations orthopedically. Claimant brought in reports which showed she had degenerative changes at C3-C4 and C4-C6 levels but denied any neck pain. Claimant had hypertension which was well controlled with the present regime. Clinically, there was no evidence of cardiomegaly or cardiac failure. Fundi were normal. Claimant had an alleged history of memory loss but her memory was very good. She was in fair grooming and hygiene. She responded fairly well to the examination situation. (Page 5)

A Medical Examination Report, DHS-49, in the records indicates that on [REDACTED], the clinical impression was that claimant was stable and her limitations were expected to last only 90 days. Claimant could occasionally lift 10 pounds or less but never lift 20 pounds or more. The claimant could stand and/or walk less than two hours in an eight hour workday but could sit about six hours in an eight hour workday. Claimant did simple grasping, reaching and fine manipulating with both upper extremities but not pushing or pulling with either upper extremity and she could not operate foot and leg controls. Claimant had no mental limitations. (Page 13-14)

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or combination of impairments that have lasted or are expected to last for the duration of at least 12 months. There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed. There is no decreased range of motion in arms and legs. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant testified on the record that she does not have any mental impairment. There is no evidence in the record indicating claimant suffers mental limitations. There is no mental residual functional capacity assessment in the record. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. For these reasons, this Administrative Law Judge finds that evidentiary record is insufficient that claimant suffers a severely restrictive mental impairment and claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was sedentary work. As an insurance department worker her work would not require strenuous physical exertion. Claimant testified on the record that she can work at a computer four to five hours per day. Therefore, there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform past work which she 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).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do at least 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 sedentary work even with her impairments. Claimant does retain bilateral manual hand dexterity. The claimant's testimony as to her limitations indicates that she should be able to perform sedentary work. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform sedentary work even with her impairments. Under the Medical-Vocational guidelines, a person who is 51 years of age,

with a more than high school education and an unskilled work history, who is limited to sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.13.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: July 13, 2009

Date Mailed: July 13, 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.

LYL/vmc

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