

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: 2009-14773
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 26, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on May 26, 2009. Claimant personally appeared and testified. Claimant did not speak English and had an Arabic translator present to assist her at the hearing.

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 30, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 12, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments do not meet duration.

(3) On December 23, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On January 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 17, 2009, the State Hearing Review Team again denied claimant's application stating that claimant can perform other work in the form of unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 204.00(H) and commented that claimant reported being depressed since her husband's death about eight months earlier. She was spontaneous and coherent with crying spells. There were no overt psychotic features.

(6) Claimant is a 56-year-old woman whose birth date is [REDACTED] Claimant is 5' 7" tall and weighs 220 pounds. Claimant testified that she has never been to school and cannot read and write and cannot count very well. Claimant has been in the United States for 9 years and is from [REDACTED] and is not a citizen.

(7) Claimant testified that she last worked three years ago as a babysitter and that is the only job that she ever had and that she quit to take care of her husband until he died [REDACTED]

(8) Claimant alleges as disabling impairments: depression, stress, leg and knee problems, hypertension, nerve problems and weakness in her hands.

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 three years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an updated psychiatric evaluation of [REDACTED] indicates that claimant stated that her life was going smooth and there was not much problems but about eight months ago her husband died and since then her stepchildren do not want her and there is a problem in the support system. Currently her husband's cousin provides some support and she started getting slowly depressed, poor sleeping, eating well, and having some helplessness, hopelessness, no energy, and no motivation and with sleep and appetite disturbance and unable to feel pleasant. She stated that her life was happy and she was married for the second time for eight years and ultimately everything is falling apart. Claimant denied a history of suicide attempts or violent behavior and this is her first contact with

mental health. Her mental status exam indicated that claimant was alert and cooperative but somewhat anxious and nervous with decreased psychomotor activity with neat and clean appearance and maintained good eye contact. Her speech was at adequate rate, volume and tone with crying spells. Her affect was dysphoric. Her mood was depressed. Her thought process was spontaneous and coherent with crying spells. Her thought content showed no overt psychotic symptoms. No history of mania but reported some mood swings with the feeling of hopelessness, worthlessness, helplessness, and inability to cope with the daily function in her life with sleep and appetite disturbances. No phobia or obsessions. No suicide ideation or gestures to do so. No dangerous ideation for others. Cognition, she was oriented three spheres and her memory was intact. Her GAF was 45 and her concentration and attention span was impaired. She was able to do the differences between apple and orange, but unable to do similarity due to acculturation problems and that she is uneducated. Her insight and judgment were impaired. Her prognosis was guarded and she does have some supportive family members. There is a mental residual functional capacity assessment in the record which indicates that claimant is markedly limited in most areas and it was filled out by a MSW. She is markedly limited based upon her acculturation problems. (Pages 14-17)

A Medical Examination Report dated [REDACTED] indicates that claimant was 67" tall and weighed 209 pounds and her blood pressure was 130/80 and she was right-hand dominant. Claimant's general examination areas were all normal except that she had some fatigue generally, some musculoskeletal weakness and mental depression. She could frequently lift 10 pounds or less and never lift more than 20 pounds. Claimant could sit less than six hours in an eight hour day and her clinical impression was that she was stable. She did not need assistive devices for ambulation and she could do repetitive actions like simple grasping and reaching

with both hands but not pushing/pulling and fine manipulating. She could not operate foot and leg controls with either foot or legs. Claimant had some problems with sustained concentration and memory. (Pages 9-10) A Medical Examination Report of [REDACTED] indicates that claimant was normal in all examination areas except that she had some fatigue, some musculoskeletal weakness and some mental depression. Again, the clinical impression was that she was stable and that she could frequently lift 10 pounds or less and that she could sit less than six hours in an eight hour day. She could do simple grasping and reaching. (Pages 6-7)

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 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. This Administrative Law Judge cannot give weight to the treating physician's DHS-49 as it is internally inconsistent. The 49 indicates the examination areas are normal with the exception of some weakness in the musculoskeletal examination area and some depression. There are no laboratory or x-ray findings listed on the DHS-49. The form indicates that assistive devices are not medically needed or required for ambulation; however, no opinion is rendered how long claimant can walk or stand. 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. The Administrative Law Judge finds that the medical record is insufficient to establish claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers limitations resulting from her reportedly depressed state. Claimant is grieving for her husband who died in [REDACTED]. There is a mental residual functional capacity assessment in the record which indicates that claimant is markedly limited but it is mostly based upon her cultural factors because she does not speak English and does not have education. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical or mental impairment.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, claimant was able to answer all the questions at the hearing and was responsive to the questions that were asked of her. Claimant was oriented to time, person and place during the hearing. There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. 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. In addition, this Administrative Law Judge finds that claimant's impairments do not meet duration.

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 as a babysitter. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

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

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

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

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

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

Claimant has submitted no 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 light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she has testified that she does walk to the store and that she cooks everyday and can cook any kind of food. Claimant does grocery shop one time per month and does do laundry. Claimant testified that she can only sit for 5 minutes at a time; however, she sat for the entire 45-minute hearing. Claimant stated that she can stand for 10 minutes and walk for approximately 10 minutes at a time or two to three blocks. Claimant testified that she prays on her knees sometimes but does do it while sitting sometimes because her knees might hurt. Claimant testified that she is able to tie her shoes while sitting and that the heaviest weight she can carry is three pounds. This Administrative Law Judge finds that claimant is very sad about her husband's death; however, she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to

establish that she has a severe impairment of combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or 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 light or sedentary work even with her impairments.

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 light or 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: June 16, 2009

Date Mailed: June 16, 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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