

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: 2009-16227

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 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 13, 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 November 3, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 6, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 13, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On January 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 3, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of medium work per 20 CFR 416.967(c) and that she is capable of performing her past work as a teacher aid and that the medical opinion is considered in light CFR 416.927 and also commented that although claimant alleged a heart attack in the record, the file does not document this.

(6) The hearing was held on May 13, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on May 13, 2009.

(8) On May 15, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: all listings in CFR 404, Subpt. P, are considered in the decision. A review of the April 3, 2009 and the material, does not change the decision. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform unskilled, medium work. In lieu of detailed work history, the claimant will be returned to her past work. Therefore, based on the claimant's vocational profile of closely approaching advanced age, and history of working as a teacher aid, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is

denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(9) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 123 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked cleaning a church for three months. She has also worked as a production worker at [REDACTED], as a daycare teacher aid and as an automotive parts packer. Claimant currently receives Medical Assistance benefits based upon the fact that she has a 17-year-old minor child who receives RSDI income.

(11) Claimant alleges as disabling impairments: a heart attack, irregular heartbeat, hypertension, chest pain, numbness on the right side from shoulder to feet.

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 since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant had an emergency room visit for uncontrolled hypertension in [REDACTED]. The echocardiogram, MRI of the brain and chest x-ray was all normal. On [REDACTED], claimant's blood pressure was 167/103. Her pulse was 59. Her respiration was 20. Temperature was 36.7. Pulse oximetry 97% on room air, interpreted negative for hypoxia. Claimant was a well-developed, well-nourished black female in mild discomfort due to headache, was alert and responded appropriately to questions, sitting upright in the bed, cooperative with the examination, and ambulatory in the emergency department. Her head was atraumatic and normocephalic. Pupils were equal, round and reactive to light. Extraocular muscles were intact bilaterally. External inspection of conjunctivae and lids showed no acute abnormality. External inspection of ears and nose showed no acute abnormality. Hearing was grossly normal. Throat was without erythema or exudate. There was mild tenderness diffusely in the occiput, posterior cervical neck muscles as well as diffusely about the head. Respiratorally, lungs were clear to auscultation bilaterally. Breath sounds were equal. There was no increased respiratory effort. Heart was a regular rate and rhythm. No murmur auscultated. In the gastrointestinal area, her abdomen was soft, non-tender, non-distended with normal bowel sounds. There were no masses palpated. The extremities were warm and non-tender with no pedal edema. Claimant moved all extremities spontaneously. Gross inspection of cranial nerves showed no motor deficits or facial asymmetry. (New Information)

Claimant had a myocardial perfusion with ejection fraction examination [REDACTED] with the findings being the distribution of the radiotracer throughout the left ventricle myocardium was within normal limits. Normal resting left ventricular ejection fraction was 65%.

Gated SPECT analysis demonstrated normal wall thickening and normal wall motion of left myocardium. No EKG changes during stress. A CT of the thoracic area revealed no pleural effusion or pneumothorax or pulmonary nodules. Emphysematous changes, predominantly in the upper lobes were seen. There was no lung mass or mediastinal lymphadenopathy. Soft tissue density in the proximal right main stem bronchi was most likely mucous plug. Short term follow-up and endoscopy to exclude a polyp was recommended. The remaining upper abdomen was unremarkable. A tiny low density area was seen in the right hepatic lobe, too small to characterize. An MRI of the brain indicated no extraaxial fluid collection was seen. No enhancing abnormal pathology was appreciated. It was determined to be a normal appearance of the brain. (New Information)

On [REDACTED], a cardiology consultation indicates that claimant's vital signs were as follows: her blood pressure was 131/87 on the left and on the right it was 129/93, pulse was 63, temperature 98.1 degrees, BMI was 22.2, height was 5' 2" and weight 121 pounds. Generally, she was alert and oriented x3 and not in apparent distress. Her HEENT revealed normocephalic and atraumatic. Pupils were round and reactive to light and accommodation. Extraocular movements were intact. Neck was supple. Trachea was centered. There was no JVD. Carotid upstrokes were bilaterally brisk without any bruits. Lungs were tympanic auscultation bilaterally without wheeze. Cardiovascular showed regular rate and rhythm. S1 and S2. No rubs, gallops or murmurs appreciated. Point of maximal intensity, fifth intercostal, midclavicular. Abdomen was soft, non-tender and non-distended. Positive bowel sounds in all four quadrants. No rebound or tenderness. Extremities showed no clubbing or cyanosis, 1+ edema, +2 pulses bilateral. 5/5 muscle strength. (Pages 24-25 of the Medical Reports)

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 insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant testified on the record that she does not have any mental impairment. Claimant testified that her level of pain on a scale from 1 to 10 without medication 10 and with medication is a 7. Claimant testified that she can walk three miles and she walked three miles on date of hearing from 8:30 a.m. to 10:00 a.m. to get to the hearing. Claimant can stand for a half an hour at a time and sit for half an hour at a time. Claimant is able to shower and dress herself but cannot squat because she hurts her knees and can bend halfway. Claimant can tie her shoes if she's sitting, but not touch her toes. Claimant testified that the heaviest weight she can carry is 10-12 pounds and that she is right-handed and does have stiffness in her hands and arms. Claimant testified that in a typical day she watches television for three hours and reads all the rest of the day. Claimant testified that she has no sex because she is going through the change but she does live with her husband and 17-year-old daughter. Claimant testified that she doesn't drive and she walks where she needs to go because her driver's license is expired and she does cook two times per week and cooks things like chicken and oven food.

There were no laboratory or x-ray findings listed in the file which indicate the limitations that claimant has established for herself. A Medical Examination Report in the file dated [REDACTED] indicates that claimant did have some typical chest pain and edema and some dizziness but was normal in all other examination areas. Claimant was 5' 2" tall and weighed 122 pounds and her blood pressure was 122/76. Her condition was considered to be stable and she was able to occasionally lift 20 pounds or less but never lift 25 pounds or more

and could stand and/or walk less than two hours in an eight hour day. Claimant did not need assistive devices for ambulation. She was able to do repetitive actions such as simple grasping, reaching, pushing and pulling and fine manipulating with both her upper extremities and could operate foot and leg controls with both of her legs and feet. (Pages 9-10) 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 claimant has a severely restrictive physical or mental impairment. For these reasons, the 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 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 last worked cleaning a church. Claimant could also work as a teacher aid even with her impairments. Therefore, this Administrative Law Judge finds that there is no medical evidence upon which to base a finding that claimant is unable to perform work in which she has engaged in, in the past. This Administrative Law Judge finds that claimant is denied 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 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 light or 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 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 at least 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.

2009-16227/LYL

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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