

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: 2009-16515

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 11, 2009

Gladwin County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 11, 2009.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) December 11, 2008, claimant applied for MA. Claimant submitted medical records for department consideration.

(2) January 28, 2009, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) February 2, 2009, the department sent claimant written notice that the application was denied.

(4) February 6, 2009, the department received claimant's timely request for hearing.

(5) April 8, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) June 11, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by having partial lung, impaired dexterity, cyst on back, and seizures.

(8) Claimant testified at hearing. Claimant is 31 years old, 5'8" tall, and weighs 130 pounds. Claimant completed 8th grade and is able to read, write, and perform basic math. She cares for her needs at home.

(9) Claimant's past relevant employment has been as a factory worker, day care provider, cashier, and pizza cook.

(10) December 6, 2007, claimant was examined by a neurologist and a narrative report was prepared. Claimant reported having seizures that she describes as staring type of spells that last a few seconds. She reported a history of grand mal seizures that have not occurred in quite some time due to medication. Claimant is alert and oriented X3. Speech is fluent and comprehensive. Language exam is normal including naming. There is no dysarthria. No recent or remote memory problems. Attention span and concentration are normal. Patient's fund of knowledge is appropriate. There is no facial motor weakness, nystagmus, or visual neglect. There are no tremors or fasciculation and no muscle atrophy. There is no significant muscle

rigidity or spasticity. Motor strength is normal. Open and close hand movements are normal. Finger to nose, heel to shin, and foot tapping are normal. Pinprick and temperature sensation are normal and symmetrical. Light touch is normal bilaterally. Vibration sense and position sense of both upper and lower extremities are normal. There is no agraphesthesia. Deep tendon reflexes in upper and lower extremities are present and symmetric. Doctor indicates that EEG indicates some isolated sharp waves, may be suspicious for abnormalities because of the sharp waves. Doctor opines that there is no convincing evidence to suggest seizure or epilepsy. Doctor asserts that perhaps the spells are due to past intracranial hemorrhage. Department A, pages 54-55.

(11) On or about August 28, 2008, claimant underwent a physical exam by a second neurologist. The second neurologist wrote a letter to claimant's family doctor indicating claimant has congenital Tarlov cyst at S3 on left. Claimant reports low back pain and occasional tingling in her left leg. Doctor opines that the congenital lesion is not amenable to surgery and usually does not cause symptoms. MRI of the lumbar spine completed on July 28, 2008, reveals enlarged left S3 nerve root cyst or even small intrasacral meningocele. Otherwise normal MRI of the lumbar spine. Department A, page 64, 32.

(12) November 13, 2008, claimant underwent abdominal x-rays due to reported shortness of breath, abdominal pain, and diaphragm pain. X-ray revealed elongated liver with some small scattered air-fluid levels which are nonspecific. Claimant also underwent chest x-rays that revealed surgical clips projected over the right upper hemithorax. No evidence of acute intrathoracic process. Department A, pages 27-30.

(13) Treatment notes prepared by claimant's health care providers indicate that claimant has been treated for low back pain/tenderness, migraine headaches, abdominal pain, dizziness, and hand tremors. Department A.

(14) On or about October 13, 2008, claimant's gall bladder was removed. Pre-surgical history indicates past surgeries: right upper lung resection for congenital emphysema, cone biopsy, left wrist surgery with a cadaver bone replacement, c-section and tubal ligation. Department A, page 52.

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).

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has congenital Tarlov cyst at S3. Claimant reports lumbar tenderness and occasional tingling in her leg. All neurologic functions are intact in upper and lower extremities bilaterally. The medical evidence

of record indicates that claimant has some type of mild spells where she stares for a few seconds. EEG indicates some isolated sharp waves suspicious for abnormality. Claimant reported having grand mal seizures prior to being prescribed appropriate medication. Neurologic exam is normal. Claimant reports history of right upper lung resection and left wrist surgery with cadaver bone replacement. Treatment notes claimant has history of hand tremors, dizziness, and tenderness in the lumbar spine. Finding of Fact 10-14.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a factory worker, day care provider, cashier, and pizza cook. The objective medical evidence does not indicate that claimant has severe physical or cognitive limitations or impairments. Due to seizure activity, claimant should not drive, work with dangerous machinery, or at heights. See discussion at Step 2, above. Finding of Fact 9-14.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment as a day care provider or cashier. Therefore, claimant is disqualified from receiving disability at Step 4.

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).

At Step 5, the objective medical evidence of record indicates that claimant has history of seizures that are much improved with medication. She has staring spells that last a few seconds. She has tenderness in her lumbar spine and a history of dizzy spells and headaches. Neurologic functions are all normal. See discussion at Step 2, above. Finding of Fact 10-14.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform work activities, with the exception of working around hazardous machinery and unprotected heights. Accordingly, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is **HEREBY UPHOLD**.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 21, 2009

Date Mailed: June 22, 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 receipt 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.

JAB/db

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