

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: 2009-16834

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 3, 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 June 3, 2009. Claimant personally appeared and testified. Claimant's daughter also appeared and testified on claimant's behalf.

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 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 23, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On February 17, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 2, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 426.968(b) pursuant to Medical-Vocational Rule 202.20 and commented that the claimant does have herniated discs at L4-L5 and L5-S1 without neurological abnormalities.

(6) Claimant is a 40-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 236 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked April 2008 as a direct care worker. Claimant has also worked as a clerical worker and is a certified pastry chef.

(8) Claimant alleges as disabling impairments: headaches, nerve damage, back pain based upon a motor vehicle accident which she had in [REDACTED]. Claimant also alleges that she has depression.

#### 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 April 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] [REDACTED] physician indicated on [REDACTED], that claimant ambulated into the clinic with a very guarded number with postural deficits of forward head, rounded shoulders, and increased thoracic kyphosis. Her cervical range of motion: flexion, side bending, and rotation were 75% with complaints of pressure in her cervical spine and extension 50% with pain elicited in cervical spine and mid thoracic spine. Her strength testing showed her bilateral upper extremities grossly 5/5. Her flexibility was decreased flexibility noted in bilateral upper trapezius

and levator scapula. Her reflexes and sensation testing were equal bilaterally and intact. Her palpation revealed sharp tenderness along bilateral suboccipitals, cervical paraspinals, upper trapezius, and levator scapula bilaterally. (Page 29) Claimant appeared to be an appropriate candidate for physical therapy and should respond favorably to treatment. (Page 30)

A medical report of [REDACTED] indicates that claimant had bilateral lower extremity strength grossly 4+/5 although it was difficult to accurately assess due to muscle guarding with resistive testing. Claimant had decreased flexibility noted in bilateral hamstrings and quadriceps, right greater than the left. Reflexes were also difficult to accurately assess due to increased muscle guarding and rigidity of all movements. Claimant was unable to bend down to tie her shoes and pick up objects from the floor. She complained of walking or doing stairs with feelings of her knees giving away. (Page 27)

A [REDACTED] report indicates that claimant's weight was 234 pounds and her height was 5' 4". Her blood pressure was 141/91 and her pulse was 81. There was no carotid or vertebral bruits auscultated. Heart had a regular rate and rhythm. Lungs were clear to auscultation. Abdomen was soft, non-tender, and non-distended. Extremities were without clubbing, cyanosis, or edema. Claimant was awake, alert, and oriented x3. Pupils were equal, round, and reactive to light. Extraocular movements were intact. There was no facial droop. There was bilateral paracervical tightness and occipital notch tenderness bilaterally. Strength was full. There were no lung tract signs. Gait and station were within normal limits. (Pages 24-25)

A neurological examination dated [REDACTED] indicated that claimant was awake, alert, and oriented x3. There was no dysarthria, dysphasia, or dysphonia identified. Pupils were equal, round, and reactive to light. Funduscopic examination was benign. Extraocular movements were

intact bilaterally. Facial sensation and expression were symmetric. Soft palate rises symmetrically. Tongue protrudes in the midline. Sternocleidomastoid and trapezius muscles were strong. Strength was graded at 5/5 in the upper and lower extremities proximal to distal. Deep tendon reflexes were 2/4 at the biceps, triceps, brachioradialis, patella, and Achilles. Plantar responses were downgoing. Sensation was intact to light touch, pinprick, and vibration in the upper and lower extremities. Gait and station were within normal limits. Finger-to-nose and heel to shin were intact without evidence of dysmetria. Rapid repetitive and rapid alternating movements were intact without evidence of dysdiadochokinesis. (Page 23) Claimant's weight was 239 pounds and her height was 5' 4", blood pressure was 144/88, and pulse was 90. There was no carotid or vertebral bruits auscultated. Heart had a regular rate and rhythm. Lungs were clear to auscultation. Abdomen was soft, non-tender, and non-distended. Extremities were without clubbing, cyanosis, or edema. There was bilateral occipital notch tenderness with increased tightness in the paracervical muscles on the right. (Page 22)

An [REDACTED] MRI indicates that at C6-C7 there was central disc herniation. There was elevation of the posterior longitudinal ligament. No cord impingement, canal, or foraminal stenosis. At C7-T1 through T3-T4 there was no posterior bulge or herniation. Canal and foramina were patent. The conclusion was herniated discs at C2-C3, C3-C4, C5-C6, and C6-C7. (Page 11) An MRI of [REDACTED] indicates that claimant had herniated discs at L4-L5 and L5-S1 without significant interval change and that T11-T12 through L3-L4, the discs were normal. (Page 9)

There is a Medical Examination Report in the file which indicates that claimant is stable and improving and that she can occasionally lift less than 5 pounds but never lift 10 pounds or more. Claimant can stand or walk less than two hours in an eight hour day but she does not need an assistive device for ambulation. Claimant could do simple grasping and fine manipulating with both upper extremities but not reaching or pushing/pulling. Claimant could not operate foot and leg controls. (Pages 5-6)

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 is 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 has reports of pain in her back. Claimant does have herniated discs. 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, the 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.

There is no evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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 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 past relevant work. Claimant has past relevant work which was sedentary. Claimant worked in clerical area inputting information into the computer and also for a temporary service in the past. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would again be denied at Step 4.

Claimant testified on the record that she does have a driver's license and that she does drive one to two times per month to the gas station or her daughter takes her where she needs to go. Claimant testified that she does grocery shop one time per month and that she needs help getting things off the shelf and rides the cart. Claimant testified that she can walk 15-20 steps and that she uses a cane but that it is not prescribed. Claimant testified that she can stand for 3-5 minutes at a time and can sit for 30 minutes at a time. Claimant testified that she can't squat, bend at the waist, shower and dress herself, tie her shoes, or touch her toes. Claimant testified that the heaviest weight she can carry is her cane and that she is right-handed and that her nerves

hurt and she drops stuff with her hands. Claimant testified that her level of pain on a scale from 1 to 10 without medication is 10 and with medication is a 5. Claimant testified that in a typical day she sits in her room and she's hurting bad.

Claimant testified on the record that she does have depression since her automobile accident.

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).

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. 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. In addition, claimant did testify that she does receive some relief from her pain medication. 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 his impairments. Under the Medical-Vocational guidelines, a younger individual (age 39), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 31, 2009

Date Mailed: July 31, 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

cc:

