

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: 2009-16898

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 9, 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 9, 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 October 20, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 13, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.18.

(3) On January 21, 2009, the department caseworker sent claimant notice that her application was denied.

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

(5) On April 14, 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).

(6) Claimant is a 45-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 160 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 2003 as a nursing home aid. Claimant has also worked at [REDACTED] as a cashier and as a barmaid.

(8) Claimant alleges as disabling impairments: back pain, chronic pulmonary insufficiency, lupus, fibromyalgia, carpal tunnel syndrome, and back surgeries in [REDACTED], and [REDACTED].

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 is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report of [REDACTED] indicates that claimant is normal in the examination areas except that she has pain in left wrist and stated that she had difficulty dressing without help. She had a normal gait and range of motion in the musculoskeletal except left wrist due to pain. Claimant had a temporary disability and no limitations. (Pages 98-99)

A MRI of the lumbar spine was done in [REDACTED] at page 112 of the medical reports which indicates that L1-2 was normal except for mild facet hypertrophy and L2-3 was normal except for mild facet hypertrophy, left greater than right. The marrow signal and alignment were normal, as is the conus. There was mild disc dislocation at L3-4 and L4-L5. Counting below assumes five non-rib-bearing lumbar-type vertebrae. No enhancing paraspinal abnormalities were identified.

On [REDACTED], claimant's blood pressure was 128/80. Her weight was 131 pounds. Her lungs were clear to auscultation and her heart S1 and S2 had regular rate and rhythm. Her abdomen was soft, non-tender and bowel sounds were present with no organomegaly, guarding or rebound appreciated. Examination of her back revealed tenderness around the scar of a lumbar spinal surgery, probably muscular strain. (Page 47) On [REDACTED] it was determined that

claimant had a chest x-ray, two views, and that there was no acute pulmonary infiltrates and the chest was unchanged from [REDACTED]. Small calcified, granulomata were again noted. The heart was not enlarged and the pulmonary vasculature was not congested. There were no pleural effusions. Visualized bones were unremarkable. (Page 48)

On [REDACTED] on medical examination, claimant's weight was 125 pounds. Her blood pressure was 120/70. Her pulse was 86. Respirations were 16. She was saturating 100% on room air. Generally, she was a healthy appearing female in no distress. HEENT was unremarkable. There was no scleral icterus or oral thrush. Neck was supple with no masses. No lymphadenopathy. No JVD. Heart was regular rate and rhythm with no murmurs, rubs, or gallops. Lungs were clear bilaterally with no wheezes, rales, or rhonchi. There was no wheezing on forced expiration. Abdomen was soft and non-tender with bowel sounds present. In her extremities there was no clubbing, cyanosis, or edema. Her skin was warm and dry with no rashes. She had chest CT scans from [REDACTED], and then back in [REDACTED]. The chest CT scan done on [REDACTED] showed some tree-in-bud opacities bilaterally, but more noticeable on the right and there was area of air space disease in the right lower lobe. There was a granuloma in the right upper lobe. Everything but the granuloma had resolved by the study of April 11, 2008. (Page 50)

On [REDACTED], claimant was status-post right breast biopsy after wire localization performed for mammographic calcifications. Her postoperative period was uneventful. She had hardly any pain and had not been taking any analgesics. On examination, the incision was healing nicely. There was no hematoma or infection. Pathology report showed fibrocystic changes in the intraluminal and lobular calcification, and fibroadenoma. This was a benign condition and no further surgical intervention was necessary. (Page 52)

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. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. There are no laboratory or x-ray findings indicating that claimant suffers a deteriorating condition or severe impairment or combination of impairments. 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 evidence in the file is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant testified on the record that she has no mental impairments. There is no evidence in the record that claimant suffers mental limitations. 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. 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 her past relevant work. Claimant's past relevant work was as a nursing home aid, as a barmaid, and as a cashier. This Administrative Law Judge finds that claimant, at the very least, could perform her past work as a cashier even with her impairments. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4 because there is no medical evidence upon this Administrative Law Judge could base a finding that claimant is unable to perform her past work.

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 work if demanded of her. Claimant testified on the record that she can drive to school 14 miles each way twice a day and that she cooks two times per week and makes sandwiches, soup, pork chops, and chicken. Claimant does grocery shop one time per month and she usually needs unloading and loading. Claimant testified she does clean her home doing dusting, picking up, and doing the dishes. Claimant testified that she can walk up to a block, stand 10 minutes at a time, and sit 10 minutes at a time if she changes positions a lot. Claimant testified that she can bathe and dress herself. She can tie her shoes, but not touch her toes. Claimant testified the heaviest weight she can carry is a gallon of milk and that she's right-handed and has some left numbness in her hands and arms. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 5. Claimant testified that she continues to smoke a half a pack of cigarettes per day even though her doctor has told her to quit. Claimant testified that in a typical day she gets her son up and takes him to school and then cooks and picks up her son and goes to bed by 10:00 p.m.

Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv). Claimant does continue to smoke.

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. Claimant did testify on the record that she does receive some substantial relief from her pain medication and therefore should be able to work under the circumstances. Under the Medical-Vocational guidelines, a younger individual (age 45), with less than 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 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: August 3, 2009

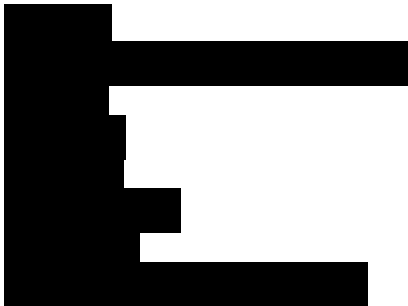
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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.

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