

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: 2009-17686
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 10, 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)?

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 20, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On December 22, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 30, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On February 11, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 29, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that she retains the capacity to perform a wide range of light work.

(6) Claimant presented additional medical evidence following the hearing that was submitted to SHRT for additional review. On June 30, 2009, SHRT once again determined that the claimant was not disabled.

(7) Claimant is a 47 year-old female who is 4'11" tall and weighs 165 pounds. Claimant has a high school diploma and college courses in psychology and English, and can read, write and do basic math.

(8) Claimant is not currently employed and last worked in May, 2008 when she was fired due to her medical problems from a job she held for 11 years. Claimant has an attorney suing for Workers Compensation, and states she never received UCB due to her disability. Claimant has also worked in factory jobs in a cookie factory and car part factory.

(9) Claimant alleges as disabling impairments pinched nerve in her neck and back.

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 does 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 testified that she has not worked since May, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes an orthopedic exam of [REDACTED] for claimant's complaint of back and bilateral lower extremity symptoms. Claimant reported falling down on some stairs about five years ago and that she has had progressive burning throughout the spinal column, including thoracic and lumbar regions as well as extending into both lower extremities. Claimant walked with a normal gait pattern, could rise up on her toes and heels and ambulate without evidence of weakness, demonstrated a normal position to her spine, and flexion and extension were full without pain. Claimant's hip range of motion was full, but she demonstrated a mild level of tenderness on palpation. Strength on manual muscle testing was equal and symmetric, sensory examination on light touch and pinprick was intact, reflexes symmetric, straight leg raise negative, and reversed straight leg raise was also negative. An MRI was recommended of the thoracic and lumbar spine regions.

X-ray of claimant's bilateral tibia/fibula of [REDACTED], because of leg pain revealed no significant abnormalities of the bones, joints, or soft tissues present involving either

tibia/fibula. There were minor patellofemoral degenerative changes and a small right plantar calcaneal spur.

X-ray of claimant's thoracic spine of [REDACTED], revealed normal alignment with minimal degenerative changes within the intervertebral disk spaces, otherwise, negative thoracic spine.

Neurosurgeon's exam report of [REDACTED], states that claimant's cranial nerves are grossly intact, strength is equal in her upper and lower extremities, deep tendon reflexes are 2+ throughout, and her gait is normal. Claimant was working in a factory about 40 hours per week. MRI's of claimant's cervical, lumbar and thoracic spine were reviewed. Impression was that of moderate cervical spondylosis C5-6 and C6-7, and right upper extremity, right lower extremity burning sensations. It was noted that claimant's hyper paresthesias and burning in her upper trunk, abdomen, bilateral legs and right upper extremity cannot be completely understood with what is seen on MRI's. Claimant's moderate cervical spondylosis is without any significant cord compression, and there is no significant foraminal stenosis noted. Claimant was referred for EMG.

EMG report of [REDACTED], states that motor nerve conduction velocities, sensory nerve conduction velocities and EMG's of the right arm and leg are normal except for mild sensory slowing of the right median nerve across the wrists. The study is consistent with early right carpal tunnel syndrome. There is no electrodiagnostic evidence of cervical or lumbar radiculopathy, plexopathy or polyneuropathy. In summary, no electrodiagnostic correlation for claimant's MRI changes at C5-6 and L5-S1 is found, and the only change noted was that of early right carpal tunnel syndrome.

Additional medical information provided following the hearing consists of Medical Provider's Assessment of Patient's Ability To Do Physical Work-Related Activities completed in September, 2008. This Assessment states that the claimant can sit for 90 minutes, stand for 45 minutes and walk for 45 minutes, that she is not capable of walking effectively and must use a cane, that she can never carry any amount of weight, that she cannot use her legs/feet for foot control operations, that she is in constant pain, and that she must take breaks every 15-30 minutes in an 8 hour work day. Assessment ends with a comment that the claimant is unable to do any meaningful sustained level of activity and is currently disabled. No medical evidence has been provided to explain these severe restrictions/conclusion. Furthermore, claimant testified that she drives couple of times per week to church and chiropractor, so she can obviously operate foot controls, that she grocery shops, cleans her small apartment, is not on any type of pain medications but uses muscle relaxers and a heating pad at night, and that can bathe and dress herself, can sit and stand for 2-3 hours at the time, and walk about a mile.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about her physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find 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 trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge is unable to conclude that the claimant cannot do her past relevant work. Claimant worked in a factory for 11 years until she was fired at the end of May, 2008 for what she claims were her medical problems. Medical information that was provided does not support claimant's testimony of severe disability and her accounts of such disability to reporting physicians, except for the Assessment of September, 2008 that contradicts even claimant's own testimony of what she can and cannot do. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability 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 other 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).

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).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least light work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 47)), with even limited education (claimant has a high school diploma and college classes) and an unskilled work history who can perform just sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a

wide range of sedentary and light work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: Septmeber 2, 2009

Date Mailed: September 9, 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.

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