

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: 2009-179

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 15, 2009

Wayne 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 January 15, 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) August 17, 2007, claimant applied for MA. Claimant submitted medical records for department consideration.

(2) November 2, 2007, the Medical Review Team denied claimant's application. Department Exhibit (Department) A.

(3) December 10, 2007, the department sent claimant written notice that the application was denied.

(4) December 10, 2007, the department received claimant's timely request for hearing.

(5) October 8, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) January 15, 2009, the telephone hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived her right to a timely hearing decision. February 17, 2009, after review of all medical evidence, the SHRT denied claimant's application. SHRT Decision, 2/17/09.

(7) Claimant asserts disability based on bi-polar disorder, sleep apnea, blocked artery, heart disease, stroke, pulmonary embolism, anemia, back problems, hypertension, and diabetes.

(8) Claimant testified at hearing. Claimant is 49 years old, 5'3" tall, and weighs 246 pounds. Claimant completed high school and two years of college. She is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. She cares for her needs at home.

(9) Claimant's past relevant employment has been as a warehouse order puller.

(10) October 9, 2007, claimant underwent an independent neurological examination. A narrative report was prepared that states, in pertinent part: patient appears mentally depressed, but speech is normal, patient is alert, oriented, and intelligent, judgment is good, memory is moderately sharp; cranial nerves are within normal limits; left arm and left leg are weak, 4.5/5, adductor group, abductor group, and flexor and extensor groups of muscles and biceps, triceps, and supinators are weak, 4/5 grade, right side is perfectly normal, so far as strength is concerned,

gait is slow; deep tendon reflexes are brisk on left and 2+ on right, plantars of both flexors, straight leg raise is 65 degrees on both sides, after that there are restrictions, forward flexion is 20 degrees, neck movements, flexion, extension, and lateral flexion are restricted, due to possible herniated disc, finger to nose test is normal, Romberg's sign is negative, and tandem gait is difficult; claimant's handwriting is legible. Doctor's opinion is that patient has sequela of stroke with happened November 24, but also has signs of lower back problem, possible cervical disc also.

(11) December 10, 2008, claimant underwent an independent physical examination. A narrative report was prepared that states, in pertinent part: neck is supple, jugular venous pressure is normal, carotid arterial pulses are normal, no carotid bruit; chest is clear to percussion and auscultation; PMI is not palpable and heart sounds are feeble due to obesity, no murmur, no gallup; abdomen is soft with no organomegaly or tenderness, bowel sounds are normal; skin has no rash or pigmentation, no ulceration or gangrene; extremities have no cyanosis, clubbing, edema, or lymphadenopathy, no calf muscle tenderness, Homan's sign negative, peripheral pulsations are 1+ all over in lower extremities; all movements of the cervical spine are painful, but no limitation of movement except right lateral movement is slightly restricted, no loss of lumbar lordosis, no tenderness or paraspinal muscle spasm; all movements of lumbar spine are restricted and painful, flexion is 30 degrees, extension 10 degrees, lateral bending 15 degrees, and rotation 15 degrees; straight leg raise is 85 degrees both sides and patient complained of pain in the left lower back during this procedure on left side; flexion of hip is restricted to 85 degrees, extension to 20 degrees, flexion of knee is 120 degrees and they are pain free; there is no pain, swelling, limitation of movements or crepitus in any other joints; grip is good in both hands, muscle power is good in all extremities, there is no wasting of muscles around the joints; without

any walking aid, patient walks in slow short paces; claimant can not tiptoe or heel walk, she has difficulty with tandem gait due to pain in the lower back, she can not squat more than 20 degrees due to pain and limitation of movement of the lumbar spine, can get on and off exam couch, can dress, undress, and write legibly; cranial nerves are intact, power, tone, and sensation are normal, deep tendon reflexes are 2+ and equal bilaterally, plantars are flexor bilaterally, Romberg sign is negative bilaterally, cerebellar functions intact, gait is normal. Doctor's impression is fairly well controlled diabetes mellitus, hypertension – well controlled with present regime, osteoarthritis of the cervical and lumbar spine with some functional limitation orthopedically, old case of CVA, no residual palsy noted; bad nerves; and exogenous obesity with no limitation of mobility or activity from it, except doctor's opinion that tiptoe and heel walking, tandem gait, and squatting are limited to obesity in addition to arthritis. Department A, Report, [REDACTED] 12/10/08.

(12) October 26, 2006, claimant underwent MRI of the lumbar spine that revealed enlargement of the uterus; L3-L4 had mild disc desiccation and minimal degenerative anterolisthesis of L3 with respect to L4 with shallow spondylotic noncompressive disc displacement or disc bulge with minimal neural foraminal narrowing contributed to by facet arthrosis; L4-L5 mild anterior spondylotic change and disc desiccation with broad-based central and left paracentral disc bulge or disc protrusion, resulting in ventral and left ventral thecal sac flattening and mild effacement of the proximal left descending L5 nerve root; underlying spondylotic disc displacement of disc bulge with mild bilateral neural foraminal narrowing contributed to by facet arthrosis.

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).

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- (3) Understanding, carrying out, and remembering simple instructions;
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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 degenerative arthritis in her cervical and lumbar spine with L5 ventral and left ventral thecal sac flattening and mild effacement of the proximal left descending L5 nerve root and mild bilateral

foraminal narrowing. Claimant has reduced range of motion in her hips, lumbar spine, and pain with full range of motion in her cervical spine. Straight leg raise is positive at 85 degrees. In October 2007, claimant was post CVA from the previous November. She had mild weakness on the left upper and lower extremities. By December 2008, claimant had regained full and equal strength bilaterally in her extremities. She walked with a slow gait and had difficulty tandem walking, heel walking, and toe walking. Doctor opined this was due to excess soft tissue as well as arthritis. Claimant's neurologist notes that she is oriented, alert, and intelligent. Her handwriting is legible. Finding of Fact 10-12. The record does not contain objective medical evidence of impairments and/or limitations due to bipolar disorder, sleep apnea, pulmonary embolism, anemia, hypertension, diabetes, or heart disease. Department A, Finding of Fact 10-11.

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 an order puller at a warehouse. This type of work ordinarily involves bending, stooping, lifting, and twisting. The objective medical evidence of record establishes that claimant has degenerative disc disease in her back. She has reduced range of motion in her hips and lumbar spine. She has pain with movement of the cervical spine. See discussion at Step 2, above. Finding of Fact 9-12.

At Step 4, the objective medical evidence of record is 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. Therefore, claimant is not 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 degenerative disc disease in her lumbar and cervical spine. She has reduced range of motion in her hips and lumbar spine. She has pain with full range of motion in her cervical spine. See discussion at Step 2, above. Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities. Considering claimant's Vocational Profile (closely approaching advanced age, high school education, and history of unskilled work) and relying on Vocational Rule 202.13, 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 UPHELD**.

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

Date Signed: _____

Date Mailed: _____

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

cc: _____

