

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: 2009-18291
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2009
Gladwin 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 17, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother.

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 25, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On January 28, 2009, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.

(3) On February 4, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On February 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 20, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant was capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational Rule 202.13.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On August 17, 2009, SHRT once again determined that the claimant was not disabled, as she was capable of medium unskilled work per Vocational Rule 203.21.

(7) Claimant is a 53 year-old woman who is 5'6" tall and weighs 226 pounds. Claimant has a GED and 1 year of college in criminal justice classes. Claimant can read, write and do basic math.

(8) Claimant states that she last worked in January, 2005 in temporary labor jobs in California, employment which lasted her a year and which she could no longer perform. Claimant was also a Corrections Officer for Michigan Department of Corrections from 1989 to 1993, left this job on stress leave and was off on medical for 2 years, and then did not go back to work but instead left Michigan in 1995.

(9) Claimant currently lives with her daughter in a house, receives food stamps, and does not drive since receiving a DUI in 2006, as her license is suspended.

(10) Claimant alleges as disabling impairments: back and hip pain, scoliosis of the spine, Hepatitis B, Hepatitis C, HIV, irritable bowel syndrome, herniated discs in lumbar spine,

bi-polar manic depression caused by domestic violence, high blood pressure, high cholesterol, and memory loss problems.

(11) Claimant has been denied SSI and is appealing this decision.

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).

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).

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 year 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a

minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a Medical Examination Report which does not indicate either when the physician first examined the claimant or the date of last examination. This report is signed sometimes in 2008, but both the month and the date of the signature has been written over, so they cannot be determined. Claimant's diagnosis is listed as Hepatitis B & C, HIV positive, and osteoarthritis. All of claimant's examination areas appear to be normal except for some spasms and tenderness in the musculoskeletal area, and forgetfulness. Claimant is limited to frequently lifting less than 10 lbs. and 10 lbs. occasionally, standing and/or walking less than 2 hours in an 8-hour work day, and sitting less than 6 hours in an 8-hour workday. Claimant can use her hands and arms for repetitive actions and also both feet/legs for operating foot/leg controls. Medical findings that support listed limitations are "generalized weakness". Claimant has no mental limitations except poor memory.

Doctor's notes of [REDACTED], indicate claimant tested positive for HIV and Hepatitis C, and also has hypertension.

MRI of [REDACTED] of claimant's cervical spine indicates degenerative disc disease with concentric disc bulging at L3-4, L4-5, and L5-S1. No significant spinal stenosis is seen.

Health Department's examination report of [REDACTED], indicates that the claimant was referred for HIV management. Claimant denied any other known medical issues, other than borderline hypertension. Claimant stated she has had herniated cervical and lumbar disks from trauma, and also occasional pain in her left hip, down the left leg into the calf which is chronic. Claimant was taking Norco for relief. Claimant stated she has some joint aches, especially in the left knee, as well as her chronic back pain for which she is on pain medication.

An MRI was mentioned which revealed no cord involvement but did reveal some chronic disease in claimant's cervical, thoracic, and lumbar spine. Claimant cited a history of bipolar manic depressive condition and was on Prozac, but this made her "spacey" so she discontinued this over one year ago, actually feels good, and denies depression. Claimant also denies any history of suicide. Claimant's physical examination was unremarkable. Impression/Plan is to get recent labs for claimant's HIV, and if her T-cells are elevated, then probably she just needs to be observed. Claimant's liver function should be followed closely due to Hepatitis C.

[REDACTED], doctor's notes indicate claimant is HIV, Hepatitis B and C positive, and also has osteoarthritis.

[REDACTED], bone density test for claimant's history of osteoporosis indicates that she has normal bone mineral density measurements.

Medical Examination Report for the exam of [REDACTED], lists as claimant's diagnosis HIV/Hepatitis C. All of claimant's examination areas are normal except that she has some tenderness in her abdominal area.

New medical information submitted by the claimant following the hearing includes a Health Department examination report of [REDACTED], completed by a doctor that has been taking care of her regarding her Hepatitis B, C, and her HIV for the last several months. Claimant has remained totally undetectable, and her last HIV viral load was in February, 2009. Claimant is on antiretroviral therapy at the current time.

As far as claimant's Hepatitis B is concerned, she is surface antigen positive, however her Hepatitis B DNA has been negative as of October, 2008, and she is currently on no therapy for this condition since she has no active virus and she would be considered a carrier.

Claimant's most recent ultrasound of March, 2009 showed fatty changes of her liver but no evidence of any nodules or lesions in the liver itself. Claimant has tried Interferon and Ribavirin for Hepatitis C treatment, but developed a reaction and was taken off it, so she is currently just being monitored for this condition.

Claimant's examination areas were unremarkable. Impression/plan is to monitor the claimant regarding her HIV every six months, and her Hepatitis B DNA every three to six months. Claimant does not appear to be in any trouble at the current time as far as her Hepatitis C is concerned.

Claimant had lumbar and cervical spine MRI's done on [REDACTED], that were cited in doctor's notes of [REDACTED]. Findings are those of chronic arthritis with low back pain and neck pain, degenerative changes and discopathy. It is noted that claimant does not have insurance to cover physical therapy. Claimant's pain medication was refilled. Irritable bowel syndrome and nicotine addiction were also noted. [REDACTED], claimant had surgery for a right ingrown toenail.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant has been diagnosed with HIV and Hepatitis B, but those conditions do not require any type of treatment at this time and are under control. There is also no indication in claimant's medical information that Hepatitis C is disabling her at the current time. Claimant does have arthritis and back issues, but medical information does not reveal that she has any severe limitations due to this condition. 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 that claimant suffers mental limitation. Claimant has reported having a bi-polar disorder and being manic depressive, but has provided no evidence of any mental health treatment to support that she indeed has been diagnosed with these conditions. Claimant testified that she has not been in any type of mental health treatment since 2006. Furthermore, medical information cited above contains quotes from the claimant that she is not having any mental issues. 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 finds that the claimant may not be able to do her past relevant work, as reported by her. Claimant testified that she did labor jobs in California, and if such labor jobs included heavy lifting claimant may not be able to perform them due to her arthritis. Claimant also reported labor jobs from year 2000 through 2003 on the Medical-Social Questionnaire she completed in November, 2008. Claimant was a prison guard from 1989 to 1994, job that does require physical exertion such as walking, and her arthritis and back condition may also prevent her from doing

this work. Claimant did report that she is taking classes online 2-3 days per week for 2 hours a day towards an associate degree.

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 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 he cannot perform sedentary and light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 53), with high school education and an unskilled work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

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.

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 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: __ November 6, 2009

Date Mailed: __ November 10, 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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