

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: 2009-18362
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 2009
St. Clair 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 2, 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 12, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On February 17, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 25, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 5, 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 she was capable of performing other work, namely light unskilled work per Vocational Rule 202.20.

(6) Claimant presented additional medical evidence following the hearing which was submitted to SHRT for review. On June 10, 2009, SHRT once again determined that the claimant was capable of light unskilled work and therefore not disabled for MA eligibility purposes.

(7) Claimant is a 42 year-old woman whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 190 pounds after gaining 25 lbs. due to cortisone shots and overeating. Claimant has a high school diploma and 20 semester hours of college in business and family law courses, and can read, write and do basic math.

(8) Claimant states that she last worked at a [REDACTED] delivering papers by driving on and off for 4 years, job that ended due to her medical condition and slow down in the business causing a lay off. Claimant did not qualify for UCB as she did not have enough income. Claimant also worked for 3 months for an insurance office from June to September, 2008 answering telephones and taking claims for new vehicles, job she was also laid

off from due to business being slow. Claimant worked in a factory in 2001 and ran a military day care from 1995 to 1998.

(9) Claimant alleges as disabling impairments: fibromyalgia, fatigue, knee swelling, pinched nerve, bi-polar disorder, anxiety, scoliosis from birth, and sciatica pain.

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 October, 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 consists of records going back to 2001. Claimant has been able to work until October, 2008, and therefore her medical condition starting in year 2008 will be considered here.

██████████ medical consultation for follow up on medical problems quotes the claimant as complaining of having pain throughout her entire body. These pains are from her face all the way down to her feet and feel like a stinging, burning type of pain. Claimant also stated her energy level has decreased quite a bit. Claimant is a smoker. Claimant did not appear to be in any acute distress, and denied any depressed mood or suicidal or homicidal ideation. Assessment was that of hypertension, controlled, chronic obstructive pulmonary disease which appeared to be stable, reflux disease, stable, diffuse musculoskeletal pain of unclear etiology for which she was given samples of Lyrica and informed to try to do range of motion exercises using a hearing pad when felt that is needed, and bipolar disorder which appears stable. (Department's Exhibit I, page 234).

MIR of claimant's lumbar spine of ██████████, states as impression degenerative disc disease without significant interval change when compared to the previous study, and posterior disc bulge at L3/4 and L4/5 as well as protrusion at L3/4. There is no evidence for canal stenosis. (Department's Exhibit I, page 268).

Medical report for rehab assistance referral due to some of the weakness and fatigue claimant has of ██████████ states that upon physical examination claimant had multiple soft tissue tender spots in the cervical, thoracic, and lumbar spine. Claimant also had decreased balance with single leg stance on the left and right side, and mild tremors. Claimant was advised to see a neurologist for an opinion. (Department's Exhibit I, pages 264 and 265).

MRI of claimant's head of ██████████, showed no evidence of significant abnormality. (Department's Exhibit I, page 267).

Claimant was again seen on ██████████, by a doctor who saw her in September, 2008. Claimant had tenderness over her knee. Assessment was that of fibromyalgia,

knee and leg pain since May, but the examination suggestive of an abductor tendonitis or patellar tendonitis, history of chronic pain disorder, and post injury of the low back. (Department's Exhibit I, page 263).

Medical Examination Report for [REDACTED], examination date indicates all of claimant's examination areas were normal except for left knee pain and back pain. Mental status is checked as normal but it is noted claimant is bipolar. Claimant's condition is stable, she is limited in never lifting more than 10 lbs., she can stand and/or walk less than 2 hours in an 8 hour workday and sit less than 6 hours in an 8-hour workday, she does not need any assistive devices for ambulation, and she can use her hands and arms for repetitive actions and operate leg/foot controls. Claimant has no mental limitations. Claimant can also meet her needs in the home without any assistance. (Department's Exhibit I, pages 237 and 238).

Medical Examination Report for [REDACTED], examination date following physical therapy (Department's Exhibit I, page 270) cites the claimant's condition as stable, she is limited in lifting up to 20 lbs. frequently, 25 lbs. occasionally and 50 lbs. or more never, and she can sit about 6 hours in an 8-hour workday. (Department's Exhibit I, pages 259 and 260).

Psychiatric/Psychological Medical Report of October, 2008 quotes the claimant as saying she received outpatient psychiatric care in approximately 2005, for about 6 months, for depression, anxiety and her "mind racing". Claimant reported experiencing chronic pain and burning in multiple parts of her body for the past 4 months, and that her leg has been swollen for the past 8 months, which she attributes to the fibromyalgia. Claimant was not currently treating with any mental health personnel, and her physician prescribed Effexor to help her manage her depression, which she had been taking for about the past 4 weeks. Claimant appeared in contact with reality, was pleasant, her motivation was satisfactory, motor activity normal, and insight

was present. Claimant's speech was intelligible, her thinking relevant and easy to follow, her thoughts well organized and logical, and there as no pressure of speech or circumstantiality. No hallucinations, delusions, thought control by others or unusual powers were expressed or observed. Claimant denied any suicidal ideation or intent, and expressed no unusual fears or anxieties. Claimant did appear depressed about her health, limitations and future, but did not appear clinically anxious or withdrawn. No significant deficits in memory or concentration were seen, or in claimant's ability to understand, carry out and remember instructions and respond appropriately to supervision, co-workers, and adapt to changes in the work setting. Diagnoses was that of Adjustment Disorder w/Depressed Mood with a GAF rating of 65-70. (Department's Exhibit I, pages 239-243).

On [REDACTED], claimant presented to the [REDACTED] Clinic complaining of racing thoughts, feeling driven, anxiety, panic attacks, and sleeping only two to three hours a night. On further evaluation claimant describes her "panic attacks" as "shaky, get upset" in response to problems and bad news. Claimant's stressors included recently being diagnosed with fibromyalgia, her father having cancer, and being now unemployed as the newspaper cut her delivery route because of bad economic times. Claimant is currently appealing her Social Security Disability as she was recently denied, and she admits that one of her reasons for coming to the clinic was "the lawyer said I need new notes". (Department's Exhibit I, page 258).

Mental status examination states that the claimant was oriented and alert to person, place, time and situation, she was calm, sat quietly in the office without restlessness, her thought processes were coherent and logical, she had no auditory or visual hallucinations, no delusional

thoughts, no suicidal or homicidal ideation, her speech was normal and not pressured, and her recent and long term memory are grossly intact. (Department's Exhibit I, page 257).

Examiner states that the claimant was at one point diagnosed with an unspecified bipolar disorder, however he could not elicit a clear history that would support continuing this assessment. A portion of claimant's focus in presenting to the clinic was to obtain documentation to support her disability, which she is trying to get based on bipolar disorder and fibromyalgia. Claimant was obviously distressed about her father's illness and losing her job, as well as other stressors in her life, and her level of distress warrants therapy and medication intervention for the anxiety issues. (Department's Exhibit I, pages 256).

Additional medical information received following the hearing includes an orthopedic exam of [REDACTED] and one of [REDACTED]. On [REDACTED] claimant complained of left calf pain. Review of systems revealed no abnormalities. Claimant was in no acute distress. Some tender parts on claimant's back and knee were noted, but she had good flexion of the lumbar spine. Impression was that of left calf pain undetermined etiology, fibromyalgia, depression, hypercholesterolemia and hypertension.

On [REDACTED], physical exam claimant is noted to be healthy and well nourished. Claimant had mild pain to palpation over the lumbar paraspinal muscles bilaterally. Internal and external rotations of bilateral hips produced no pain and showed functional range of motion. There was pain to palpation over the left calf and shin. X-rays obtained on this date of the lumbar spine were reviewed which reveal mild disc space loss L5/S1, mild to moderate L3 to L5, and very subtle scoliosis. MRI of claimant's lumbar spine dated [REDACTED], show posterior disc bulge at L3/4 and L4/5 with protrusion at L3/4, no significant change from prior study, per

report. Diagnoses were left L5 radiculopathy, lumbar spine osteoarthritis, mild, lumbar scoliosis L2, mild, low back pain and left knee pain.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. 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. 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 would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was doing newspaper delivery, job she held for 4 years and lost in October, 2008, month prior to applying for MA and claiming disability. Claimant's job did not end because of her disability but because of the economic situation leading to her lay off. Claimant also worked in an insurance office in the summer of 2008 answering phones and

processing insurance applications, job she again was laid off from due to slow down in business. 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 18-44 (claimant is age 42), who is even illiterate or unable to communicate in English and has only had unskilled or no previous work experience, that can only perform sedentary work is not disabled pursuant to Medical-Vocational Rule 201.23. Claimant has a high school diploma and 20 semester hours of college courses and previous work experience.

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 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: September 1, 2009

Date Mailed: September 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.

IR [REDACTED]

cc:

[REDACTED]