

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: 2009-18614

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2009

Bay 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, an in-person hearing was held on June 10, 2009. Claimant was represented at the hearing by [REDACTED]. Claimant 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 29, 2008, claimant filed an application for Medical Assistance, retroactive Medical Assistance to July 2008, and State Disability Assistance benefits alleging disability.

(2) On January 29, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On February 2, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On February 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 4, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments were non-severe per 20 CFR 416.920(c).

(6) The hearing was held on June 10, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on July 20, 2009.

(8) On July 21, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The new information submitted does not significantly change or alter the previous decision. The claimant's examination in [REDACTED] was basically normal. Psychological testing in [REDACTED] showed she functioned in the low average range of intelligence. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case is also denied. SDA is denied per PEM 261 due to lack of severity.

(9) Claimant is a 49-year-old woman whose birth date is [REDACTED]. Claimant is 5' 7-1/2" tall and weighs 135 pounds. Claimant is a high school graduate and has one year of college as an EKG tech and attended vocational school to be a nurse's assistant for

computer graphics. Claimant is able to read and write and does have basic math skills. Claimant stated she can add, subtract, and count money.

(10) Claimant last worked in September 2008 for the [REDACTED] as a home healthcare aid taking care of an elderly person earning [REDACTED] an hour. She stated she earned [REDACTED] a month. Claimant has also worked as a front desk clerk, worked on computers, and doing interior wall repairs in the past.

(11) Claimant alleges as disabling impairments: joint pain, shortness of breath, back and neck pain, thyroid tumor, mental illness, scoliosis, Epstein Barr virus, numb hands, neck stenosis, degenerative disc disease, Asperger's syndrome, organic brain disorder, and adult deficit hyperactive disorder.

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 has not worked since September 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED] the claimant had multiple joint pains, but a normal examination (pp. 30-33). Psychological testing dated [REDACTED] showed the claimant's verbal IQ was 85, her performance IQ was 85, and her full-scale IQ was 84 (new p. 33). The examiner indicated that claimant generated IQ scores that were in the borderline range of intellectual functioning (new p. 29); however IQs in the 80 are low average. The claimant was admitted in [REDACTED] due to heavy menstrual periods (new p. 1). She underwent a laparoscopy and total abdominal hysterectomy (new p. 3). On physical examination on [REDACTED] when she was admitted for her hysterectomy she was a well-developed, well-nourished white female. She had a moderately nervous appearance. She weight 156 pounds and her blood pressure was 118/82. Her skin was clear. She had no palpable lymphadenopathy. Examination of the head, eyes, ears, nose, and throat was entirely within normal limits. Neck was supple without masses. Back was without kyphosis or scoliosis, without costovertebral angle tenderness. Chest was clear to auscultation and percussion. Cardiac: She had regular sinus rhythm without murmurs. Pulses were equal at 2+ throughout. Breasts were full without masses or tenderness. Abdomen was scaphoid, non-tender, without palpable liver, spleen, or kidneys. Bowel sounds were well nourished. Extremities: The range of motion was within normal limits without clubbing, cyanosis, or peripheral edema. The neurological area: Physiologic. Pelvic: Introitus was marital. Cervix was normal in appearance. Pap smear was obtained about 11 months ago and was normal. Claimant's cervix, when you place traction in it, it comes to within about 1.5 cm of the introitus. Uterine fundus was enlarged, about 10 weeks in size, irregular shape, and tender to palpation. There were no adnexal masses that could be appreciated.

Claimant was diagnosed with uterine prolapse and multiple uterine fibroids. Claimant had surgery for a total abdominal hysterectomy and tolerated the procedure well.

A Medical Examination Report dated [REDACTED] indicates that claimant was cooperative in answering questions and following commands. She was very scattered in thought. Her insight and judgment were both appropriate. The claimant provided a good effort during the examination. She was jumpy and appeared to be irritable. She appeared tired with puffy areas under her eyes. Her blood pressure was 120/80 on the left arm. Her pulse was 80 and regular. Respiratory rate was 16. Weight was 149 pounds. Height was 64.5 inches without shoes. Her skin was normal. Her visual acuity in the right eye was 20/20 and in the left eye was 20/25. Pupils were equal, round, and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. Breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. There was regular rate and rhythm without enlargement. There was normal S1 and S2 in the heart. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular area, there was no clubbing, cyanosis, or edema detected. The peripheral pulses were intact. There was no evidence of joint laxity, crepitation, or effusion. Grip strength remained intact. Dexterity was unimpaired. The claimant could button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, and no difficulty squatting. There was no kyphoscoliosis or lack of lumbar lordosis. Range of motion studies was normal. Cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pinprick. Reflexes were intact and symmetrical. Romberg testing was negative. The claimant walked with a normal gait without the use of an assistive device (pp. 31-32).

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. Claimant has reports of pain in multiple areas of her body; however, there are limited corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The clinical impression is that claimant is normal. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, 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.

Although claimant did have a severe impairment and needed a hysterectomy, once she had her hysterectomy, her impairments do not meet duration. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment which has lasted or will last the durational requirement of 12 months or more.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reported Asperger's syndrome, ADHD or organic brain disorder.

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).

There is insufficient objective medical evidence contained in the file of a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant does not appear to be limited in her activities of daily living, social functioning, concentration, persistence, or pace or the ability to tolerate increased mental demands associated with competitive work. Claimant did testify that she got married approximately a week before the hearing and was competent enough to enter into a marital relationship. Claimant was able to answer all the questions at the hearing and was responsive to all the questions. Claimant was oriented to time, person and place during the hearing. 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 light or sedentary work. Claimant had been a home healthcare aid for the [REDACTED] up to a month before the hearing and had also worked as a front desk clerk and a computer technician. A computer technician and front desk clerk does not require strenuous physical exertion. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied again 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 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/psychiatric 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 at least light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Claimant testified that she doesn't have any limits on her ability to walk. She can stand for 20 minutes at a time and can sit for 30-60 minutes at a time. Claimant is able to squat even though her knee hurts, bend at the waist, shower and dress herself and tie her shoes. Claimant can carry 20-30 pounds and can carry 20 pounds repetitively. Claimant is ambidextrous and stated that her hands and arms are fine besides some numbness. Claimant's level of pain on a scale from 1 to 10 without medication is an 8/9 and with medication is a 5.

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. Claimant did testify that she does receive some relief from her pain medication. 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. Under the Medical-Vocational guidelines, a younger individual (age 49), with a more than 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: September 21, 2009

Date Mailed: September 21, 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.

LYL/vmc

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