

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: 2009-20659
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 24, 2009
Arenac 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 24, 2009. Claimant personally appeared and testified. Also appearing on claimant's behalf was her brother [REDACTED]. Claimant was represented by [REDACTED], [REDACTED].

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 December 10, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 15, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months and citing Substance Abuse as a factor for SDA eligibility per Social Security Ruling.

(3) On January 15, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On March 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 13, 2009, the State Hearing Review Team again denied claimant's application stating impairment lacks duration per 20 CFR 416.909, and citing Drug Alcohol Use Material per 20 CFR 416.435.

(6) Claimant was to submit additional medical information following the hearing, and the record was left open until September 29, 2009, for her to do so. On September 24, 2009, local county office advised that per telephone message from claimant's authorized representative she was uncooperative and failed to keep a doctor's appointment. Claimant further informed her representative that she was going to lose her hearing anyway and hung up. Representative stated that the hearing decision may be made based on what information was received at the time of the hearing.

(7) Claimant is a 50 year-old woman who is 5'3" tall and weighs 140 pounds after gaining 25 pounds due to inability to get around. Claimant completed 12th grade and 2 years of nursing training, but has no degree or certificate in that field.

(8) Claimant states that she is currently trying to work at 10 hours per week at \$7.40 per hour at a deli counter, and has been doing so for 4-6 weeks prior to the hearing. Claimant has worked at a supermarket deli for 1 year up to 2008 but walked off the job as she felt no one liked her. Claimant has also worked at a party store, in a bar as a dishwasher and waitress from

2006 to 2007, and at another restaurant as a waitress from 2001 to 2005, job that ended when she quit because the owner told her she was clumsy.

(9) Claimant currently lives with a friend and receives food stamps.

(10) Claimant alleges as disabling impairments foot and hand injury from a November, 2008 car accident, and bi-polar disorder with anxiety and depression.

(11) Claimant has applied for SSI in January, 2009 and been denied, and will appeal this denial.

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 as her current employment of 10 hours per week at \$7.40 per hour is not sufficient amount of money to qualify as such activity. 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 consists of a hospital report for admission date of [REDACTED] after the claimant had a motor vehicle accident on [REDACTED] when she hit a tree. Claimant stated she drinks alcohol every day and smokes 1 to 1 ½ pack of cigarettes per day, but denied using any drugs. Claimant was diagnosed with left foot fracture and also had a significant laceration of her hand which has been sutured by the trauma service. Claimant underwent surgery on [REDACTED] on her left hand that was repaired with pinning of the finger separations and soft tissue repair. Claimant was discharged on [REDACTED], with discharge diagnosis of status post motor vehicle accident, right multiple rib fractures with cardiac and chest contusion, left hand and finger laceration with 3-4 webspace deep laceration, hypertension, left Lisfranc’s fracture dislocation, hypoxemia secondary to cardiac contusion, alcohol abuse, and dysthymic disorder.

Medical Examination Report for [REDACTED], examination indicates that the claimant is in a wheel chair following her surgery, that she has elevated blood pressure, and that she has left foot and ankle cast and surgical scar on her left hand with decreased range of motion and strength. Claimant’s condition is stable with expected return to work date of 3-5 months. Claimant is to be in a wheelchair until her foot heals and she completes physical therapy.

Claimant has no mental limitations, but needs assistance in the home with cleaning, cooking and shopping.

Orthopedic report of [REDACTED], states that the claimant is doing well and her pain is well controlled. Physical exam shows that claimant's foot is minimally swollen, her wounds are healed, and that the stitches were removed and steri-strips applied. X-rays showed that the left foot is healing with well placed hardware. Claimant was to be non-weight bearing in a cast for 6 weeks.

Claimant was seen again on [REDACTED], her wounds were well healed, she had no neurological issues, and alignment of the foot was excellent. Claimant was to be non-weight bearing for another 4 weeks and then could be in a walker boot.

Another orthopedic exam of [REDACTED], states that claimant's foot has some purplish-reddish discoloration, it is not hypersensitive to touch, but wounds are well healed. The doctor could however still see a line between the bone graft and the medical cuneiform. A bone stimulator was fitted to claimant's foot, she will be seen in one month, and she is to remain-non-weight bearing in the meantime. Medical Examination Report of the same date indicates that the claimant is to remain non-weight bearing on her left foot.

Behavioral Health Clinical Assessment of [REDACTED], states that the claimant had a verbal altercation with her boss at work and was excused from work on [REDACTED], and then elected to seek professional help. Claimant reported experiencing extreme mood swings for the past 3 months, and reported anxiety, depression, poor sleep, pacing and racing thoughts. Claimant had never been involved in outpatient mental health services or nor has she ever had a psychiatric hospitalization. Claimant had been prescribed medications for depression and anxiety and this has helped with her panic attacks. Claimant was drinking 6 beers 5 nights a week but she denied having a substance abuse problem and had no interest in substance abuse

treatment. Claimant was orientated to person, place and time, denied any delusional thoughts, presence of hallucinations, illusions, and had alert level of consciousness. No sensory deficits were reported. The writer noted that claimant's impairment was due to influence by a substance, because she thought that the claimant was drinking during the time of her intake. Claimant was allowed to go out to the restroom and outside to smoke a cigarette upon her request when she became anxious. The office smelled of alcohol and examiner's secretary confirmed that this was indeed the smell in the office while the claimant was outside. Claimant's energy level was manic as she was up and down out of her chair and pacing in the office. Claimant's speech was rather rapid. Examiner could not determine if the claimant was manic or if it had to do with alcohol use. Diagnosis was that of bipolar disorder, unspecified, alcohol abuse, and GAF of 50.

Claimant cancelled her subsequent therapy appointment of [REDACTED] [REDACTED] from meeting of [REDACTED] indicates that recommendations from the clinical assessment are that the claimant could benefit from substance abuse counseling and/or AA meetings. Claimant was taking psychotropic medications at that time prescribed by her primary physician. Goals and objectives of the therapy treatment for the claimant were cognitive behavioral therapy once a week or as needed, and substance abuse treatment.

Comprehensive Psychiatric Evaluation of [REDACTED] following a referral from Access Alliance quotes the claimant's chief complaint as having too many problems to deal with, and now she feels she needs some help. Claimant presented with a long history of emotional rollercoaster with mood swings going from being happy for few weeks to being down with deep depression. Claimant reported being in the car accident, that she drank before she was driving, and that she is almost drinking every day to the extent of six beers. Claimant's speech was spontaneous and coherent. Her mood was anxious and emotional at times with tears rolling in

eyes. Claimant's affect tends to be inappropriate at times, but she does not show any psychotic symptoms, there is no evidence of delusions or hallucinations, and her cognitive functions are intact. Claimant is oriented to time, place, and person, there is no impairment of short-term or long-term memory, and she is denying any suicidal or homicidal ideations. Claimant is noted to have significant problem with the alcohol abuse, but she is trying to minimize the extent of the problems. Claimant was diagnosed with bipolar mood disorder, currently depressed type, and comorbid condition being alcohol abuse, possible dependency, hypertension and GAF of around 50. Claimant was strongly cautioned about abuse of alcohol and the possible implications, especially when she is taking the medications. Claimant understood and promised she will cut down drinking gradually. A follow up appointment was set in four weeks' time for medication review.

Medication Review Note of [REDACTED], indicates that the claimant has moderate depression that is improving, and that she denies any suicidal or homicidal ideations. Claimant continues to have anxiety most days, and also continues to drink alcohol 3 times per week.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. While the claimant had surgery on her foot and hand in December, 2008 due to a car accident she was in, her condition was improving in March, 2009. 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 working in a supermarket deli, job she has gone back to part time as of the date of the hearing. 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 at least sedentary and light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 50), with high school education or more and an unskilled or no 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. However, the claimant did have foot surgery in December, 2008 that made her unable to be weight bearing on this foot as of March, 2009 exam. This exam also indicated that she was to continue to be non-weight bearing on this foot. This temporary condition would have prevented the claimant from working for the period of time from December, 2008 through April, 2009, as the claimant went back to work sometimes in May, 2009. Claimant is therefore entitled to SDA for this closed period of time. It is noted that

for MA eligibility the claimant must be disabled for 12 months or more, not only 90 days as for SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance. 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, and MA denial is AFFIRMED.

Claimant is however entitled to SDA for the closed period of time from January 1, 2009 to April 30, 2009 (as she became disabled in December, 2008 and applied for assistance on December 10, 2008, therefore potentially eligible for SDA payments in first half of January, 2009). Department's SDA denial is therefore partially REVERSED. Department shall:

1. Process claimant's December 10, 2008 application and grant her any SDA benefits starting in January, 2009 and ending on April 30, 2009, she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant of this determination.

SO ORDERED.

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

Date Signed: November 18, 2009

Date Mailed: November 19, 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]