

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: 2009-20928

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 24, 2009

Wayne 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, a telephone hearing was held on June 24, 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) 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 September 30, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 17, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 12, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On March 13, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 12, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an independent physical consultative exam by an internist.

(6) The hearing was held on June 24, 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 October 14, 2009.

(8) On October 16, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.07.

(9) Claimant is a 55-year-old woman whose birth date is [REDACTED]. Claimant is 5' 8-1/2" tall and weighs 160 pounds. Claimant has a Bachelor of Arts degree in social work and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2007 at [REDACTED] as a secretary. Claimant has also worked at [REDACTED] as a campus manager and as a campaign manager for thirteen years.

(11) Claimant alleges as disabling impairments: depression, carpal tunnel syndrome, back and neck pain, herniated disc, nerve damage, and difficulty walking as the result of a motor vehicle accident.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] psychiatric medical report indicates that claimant spelled her first and last names correctly but didn't know the date. She did not know the name of the office or why she was there. She was able to repeat three digits forward and two digits backward immediately. The claimant was able to recall one of three objects immediately after stated to her, recalling quarter but forgetting key and pencil. When this happened again she recalled only two of the three, quarter and key, so it

was tried again. When asked the name of the past few presidents the claimant said Bush. The claimant knew her birthday but gave her age as 53 rather than 54. When asked to name five large cities, the claimant said Detroit, Hawaii, and Texas. When asked to name current famous people, the claimant said Bush, Oprah Winfrey, and Quame Kilpatrick. When asked to name an important event the claimant said no money, people getting laid off, fired, or whatever. In calculations the claimant said $4+7=11$, $16-9=7$, $4\times 6=24$, and $42/7=$ I don't know. When asked to subtract seven's from 100 the claimant said "with pencil and paper?" and she was asked if she could do it in her head and she said no. In abstract thinking when asked to interpret "The grass is greener on the other side of the fence," the claimant said they want their grass to look green like the other side of the fence. When asked to interpret, "Don't cry over spilled milk," the claimant said clean up the milk. For similarities and differences when asked how a bush and a tree were alike, the claimant said both were plants. When asked how a bush and a tree were different, the claimant said one is little and one is big. In judgment when asked what she would do if she found a stamped, addressed envelope, the claimant said put it in the mailbox. When asked what she would do if she discovered a fire in a theater, she said get out. When asked about her plans for the future, the claimant said I have no idea. The claimant was diagnosed with adjustment disorder with depressed mood and polysubstance dependence. Her GAF was 57. Her prognosis was fair to good and she did demonstrate some strength in the sensorium and mental capacity portion of the exam. The quality of the written explication of the function report-adult was good and this was presumably written by the claimant herself as she listed her name as the person completing the form. The claimant was not felt capable of managing her own benefits funds in light of her history of substance abuse/dependence.

A Physical Residual Functional Capacity Assessment in the file dated [REDACTED], indicates that claimant could occasionally lift twenty pounds and frequently lift ten pounds and stand and/or walk about six hours in an eight-hour workday and sit about six hours in an eight-hour workday and she could push and pull unlimited with her upper extremities or foot controls. The specific facts stated were, claimant was involved in a motor vehicle accident on [REDACTED]. Claimant sustained injuries to the neck and back. Claimant started physical therapy on [REDACTED]. Claimant had a diagnosis of motor vehicle accident involving neck and lower back. Treatment diagnosis was cervical dorsal strain, lumbar strain. The claimant was attending outpatient physical therapy at [REDACTED]. The office visits of [REDACTED] described the pain level as 9/10 for cervical dorsal region and for lumber spine region as 9/10. The observations were the pain initial evaluation involving neck and back. On palpation she was very tender. Range of motion was 20 degrees, extension was 10 degrees. Left was 20 degrees and right was 30 degrees. Muscle strength was 2/5. Shoulder flex was 70, muscle strength 3/5, elbow muscle strength 3/5. A [REDACTED] note indicates that claimant had no new complaints and would continue with physical therapy. Claimant could occasionally climb, balance, stoop, kneel, crouch, and crawl and she had no manipulative limitations, no visual limitations, no communicative limitations, and no environmental limitations. In reference to her activities of daily living she lives in an apartment alone and is awakened daily by her son. She has coffee with her son and takes her medications, cooks breakfast, plans the day, goes to therapy, takes medications after lunch and dinner. She doesn't have to take care of anyone or pets. Before her illness she was able to walk and perform normal activities without pain and discomfort and was able to take care of herself personally, dress, cook, bath, clean, and complete hygiene and grooming but is now in pain.

A medical examination was scheduled for claimant on two separate occasions and according to [REDACTED] of the Department of Human Services, claimant missed both appointments and three outstanding requests for medical records were sent and only one was received back.

A Medical Examination Report dated [REDACTED] indicates that the clinical impression is that claimant is stable and that she could sit or walk less than two hours in an eight-hour workday and could occasionally carry ten pounds, but never ten pounds or more. Claimant could not do simple grasping, reaching, pushing/pulling, or fine manipulating and couldn't operate foot and leg controls and no mental limitations. (pp. 13-14)

Claimant testified on the record she does have a driver's license but she usually gets a ride because she loses the feeling in her hands. Claimant does live alone in an apartment and she is single with no children under 18. She is supported by family and friends. Claimant testified she is able to walk one block, stand for twenty minutes at a time, and sit for twenty minutes at a time. Claimant testified that she is able to shower and dress herself sometimes but that she cannot squat, bend at the waist, tie her shoes, or touch her toes. Claimant testified that the heaviest weight she can carry is five pounds and that she is right-handed and has carpal tunnel syndrome. Claimant testified that her level of pain on a scale from one to ten without medication is a ten to a twenty and with medication is a six. Claimant testified that she does smoke a half a pack of cigarettes per day and her doctor hasn't told her to quit. Claimant testified that in a typical day she reads, watches television, and looks out the window and cries. She is in constant pain, it never stops.

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. Unfortunately, the claimant did not attend the internal medical examination

so there is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. The Physical Residual Functional Capacity Assessment in the record indicates that claimant does not have severe limitations as stated on the DHS-49, Medical Examination Report. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. The Mental Residual Functional Capacity Assessment indicates that claimant's condition is stable. There are no laboratory or x-ray findings listed. There is insufficient support given for the extreme physical limitations contained in the DHS-49, Medical Examination Report, which indicates that claimant cannot use her hands for any reason. In short, the DHS-49 and claimant have restricted herself from tasks associated with occupational functioning based upon claimant's 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. This Administrative Law Judge finds that the medical record is insufficient to establish claimant has a severely restrictive physical impairment.

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/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. Claimant is able to live alone and take care of her own personal needs and also takes care of her activities of daily living. There is a psychiatric report in the file, but there is no Mental Residual Functional

Capacity Assessment in the record. Claimant was able to answer all the questions at the hearing and was responsive to 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. There is insufficient objective medical evidence in the record indicating claimant suffers mental limitations resulting from her reported depressed state. 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 used to work as a secretary and also as a campaign manager and campus manager. These prior employment positions do not require strenuous physical exertion. There is insufficient objective medical evidence in the record which would indicate that claimant could not perform light work which a secretary, campus manager, and campaign manager would be considered either light or sedentary work. There is insufficient objective medical evidence contained in the file 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 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 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. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

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. 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.

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, p. 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: January 6, 2010

Date Mailed: January 7, 2010

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

cc:

