

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: 2009-25058
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 2009
Otsego 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 August 5, 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 February 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 19, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 20, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On April 27, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 24, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating she retains the capacity to perform a wide range of sedentary semi-skilled/skilled work and quoting Vocational Rule 201.27 as a guide.

(6) Claimant is a 48 year-old woman who is 4'9" tall and weighs 82 pounds. Claimant completed high school and two years of college in business classes.

(7) Claimant last worked in September, 2008 as a black jack dealer in a casino, job she held from 1999 to 2004 and from 2005 to 2008. Claimant testified that she was sick and absent from work, the tribe claimed they did not receive her FMLA papers, and they fired her. Claimant applied for UCB but was denied due to being unable to work. Claimant also worked in 1999 for a psychologist as office help.

(8) Claimant currently lives with her mother and receives food stamps. Claimant does not have a driver's license due to a DUI from 15 years ago, and has never re-applied to get the license back.

(9) Claimant alleges as disabling impairments: multiple sclerosis, rheumatoid arthritis, shingles outbreak currently, inflammation of the bowel for which she is being treated and getting better, and depression.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since august, 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 includes a Psychiatric/Psychological Medical Report of [REDACTED]. Claimant reported working full-time as a dealer at a casino until September 27, 2008, at which time she was off on a family medical leave of absence

and sent papers in but received a letter from the tribe letting her go because she allegedly abandoned her job. Claimant alleged disability due to multiple sclerosis diagnosed in 2005 and more recently she was diagnosed with rheumatoid arthritis. Claimant states she experiences a lot of pain everywhere, extreme fatigue and her short-term memory isn't real good, and this is what keeps her from working. Claimant was not involved in mental health treatment at the time and has no history of outpatient or inpatient mental health treatment.

Claimant reported always getting along fine with co-workers and neighbors. Claimant also gets along fine with her neighbors, has girlfriends that come over usually on a weekly basis to play cards and/or watch a movie, and has been getting along fine with her friends. Claimant reported being an avid gardener, that she likes to decorate and considers herself to be artistic and crafty. Claimant further reported taking care of all of her basic activities of daily living, that she is pretty handy at small things but has little strength or stamina anymore. A typical day for her consists of watching a lot of television, spending some time on the computer and reading true crime stories and historical novels.

Claimant's speech was spontaneous, adequately productive and organized, she feels she can focus, pay attention and concentrate alright, but has noted short-term memory problems. There was no evidence elicited to suggest psychosis, and claimant denied suicidal ideation as well as urges and impulses to harm others. Claimant also denied elevated mood and euphoria, anxiety, nervousness, panic, irritability, anger, guilt, shame and regrets, obsessive-compulsive types of behavior, and having difficulty being with small groups of people or in public places. Claimant had fair insight, was oriented times three, and her immediate recall was good.

A letter from Neurologist dated [REDACTED], was noted indicating that on a complete neurological exam the only abnormalities were hyperreflexia which was somewhat

worse on the right compared to the left side at the right knee, but present on the left knee, both ankles and in her upper extremities. Neurologist agreed with the 2005 diagnosis of multiple sclerosis based upon claimant's MRI, positive immunoglobulin bands found in claimant's cerebrospinal fluid and increased reflexes.

Claimant's diagnosis is that of adjustment disorder with depressed mood, history of alcohol abuse judged to be non-significant at this time, and a GAF of 58.

Medical Examination Report of February, 2009 indicates that the claimant is limited to lifting/carrying less than 10 lbs. occasionally, that she can stand/walk/sit about 6 hours in an 8 hour workday, that she can use her hands/arms for repetitive actions, and that she can operate foot/leg controls. Claimant does not need assistive devices for ambulation. Claimant has mental limitations in comprehension, memory and sustained concentration.

MRI report of [REDACTED], states that overall there has been a very slight interim worsening/increasing in the visibility of the multiple sclerosis plaques, as they are now slightly diffusely larger, and wider in distribution than the prior MRI study from 2005.

Additional information submitted by the claimant following the hearing includes a [REDACTED] neurological exam quoted in the psychological exam cited above. This exam report states that the only abnormalities are hyperreflexia, and that claimant's gait, station, coordination, sensory and cranial nerve testing was all within normal limits.

[REDACTED], medical evaluation from [REDACTED] indicates that the claimant can do her activities of daily living and perform household chores, is able to garden and decorate, but does do this with frequent rests. Claimant denies any problems sitting, standing or walking, but performs those slowly, and cannot lift anything greater than 10 pounds.

Claimant reported smoking 1 pack of cigarettes per day for 30 years, and that she drinks an occasional beer.

Claimant's mental status is normal, her immediate, recent and remote memory is intact with normal concentration, her insight and judgment are both appropriate, and she provides a good effort during the examination. Claimant's blood pressure was 98/60 and she weighed 92 lbs. There is no evidence of joint laxity, crepitation, or effusion, grip strength remains intact, dexterity is unimpaired, claimant could pick up a coin, button clothing, and open a door. Claimant did have mild difficulty getting on and off the examination table, moderate difficulty heel walking, and mild difficulty toe walking, squatting, and hopping.

Claimant's cranial nerves are intact; her motor strength is diminished in 4/5 in the lower extremities due to stiffness and hypertonicity. Sensory is intact to light touch and pinprick. There is hyperreflexia at the knees and ankles. Claimant walks with a normal gait without the use of an assist device. Conclusion was that the claimant at this point continues to remain relatively active, she is on Avonex treatment, and appears to be stable.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental 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 established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. This Administrative Law Judge finds that the medical record is sufficient to establish that claimant has a severely restrictive physical impairment.

At Step 3 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, the Administrative Law Judge would have to deny the claimant again based upon her ability to perform past relevant work. Claimant's past relevant work was as a casino card dealer, job that does not require lifting or substantial movement. Claimant's medical record shows that she was diagnosed with multiple sclerosis in 2005 and that her condition has not significantly deteriorated since that time. Claimant worked up to September, 2008 as a casino dealer. 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 sedentary 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 work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 48), with even limited education and an unskilled work history (claimant has two years of college and semi-skilled work history as a casino dealer and a secretary) who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the

alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary 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 22, 2009

Date Mailed: September 22, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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