

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: 2009-2534

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 18, 2008

Oakland 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 December 18, 2008. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] Claimant's daughter, [REDACTED] also 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 March 13, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 11, 2008, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On September 22, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 14, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 31, 2008, the State Hearing Review Team again denied claimant's application stating that claimant had a non-severe impairment or condition per 20 CFR 416.920(c).

(6) The hearing was held on December 18, 2008. 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 for further review on March 11, 2009.

(8) On March 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.15. The State Hearing Review Team commented that the claimant's physical exam dated [REDACTED] and [REDACTED] were unremarkable. A mental status exam dated [REDACTED] showed her processing time was slowed and she was depressed. However, thoughts were logical and organized. IQ testing in [REDACTED] showed the claimant had normal to above normal intelligence. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5), will not

be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing simple, unskilled, medium work.

(9) Claimant is a 57-year-old woman whose birth date is [REDACTED]. Claimant was 5' 1-1/2" tall and weighs 200 pounds. Claimant has an associate's degree in liberal arts and is able to read and write and does have basic math skills, although claimant testified that she is dyslexic.

(10) Claimant last worked March 2007 doing real estate appraising. Claimant also worked in copier repair for two years.

(11) Claimant alleges as disabling impairments: fibromyalgia, pain, ADHD, memory problems, sinus infections, carpal tunnel syndrome in both hands, shortness of breath, hypertension, migraines, and depression.

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

The objective medical evidence on the record indicates that on [REDACTED], claimant had sinusitis and congestion with an occasional cough and sinus drainage. Her blood pressure was 122/80, her temperature was 97.8, her pulse was 111, and her weight was 205 pounds. Claimant's head and face were normocephalic. Her eyes had no exophthalmos, pupillary reaction was normal and EOM was intact. In her ears her hearing was grossly intact and her tympanic membranes were normal. She had some discharge from her nose where tonsils were absent. Her neck and thyroid were supple without adenopathy or enlarged thyroid. She had no palpable cervical or supra clavicular adenopathy. Her respiratory was normal to inspection and her lungs were clear to auscultation. Her cardiovascular system had regular rhythm and normal S1 and S2 without S3, S4 or murmur. Her vascular system was well perfused. Her carotid and pedal pulses were normal. No bruits. Her extremities appeared normal. There was no edema or cyanosis. Neurologically she was alert and oriented. Her cranial nerves 2 through 12 were grossly intact. At an [REDACTED] office visit it was indicated that claimant had been forgetting to take her blood pressure medication which met she was not compliant with her medication. Claimant had no swelling of the joints. Claimant had a basically normal physical examination. Her blood pressure was 160/90, her temperature was 97.8, her pulse was 110, and she weighed 205 pounds. Most of the other doctor visits in the file indicate that claimant has

some form of sinusitis which was chronic and she had some sore throats but her visits indicated that she was basically normal in all areas.

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 are 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 no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. This Administrative Law Judge cannot give weight to the treating physician's assessment that claimant has less than sedentary job restrictions. The bulk of the objective medical examinations contained in the file indicate that the examination areas are normal. There are no laboratory or x-ray findings. There is no clinical impression that claimant's condition is deteriorating. 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. This Administrative Law Judge finds that the medical record is insufficient to establish claimant has a severely restrictive physical impairment. The [REDACTED] did conduct a psychiatric/psychological medical examination which indicates that claimant was well oriented to time, person, place and situation. She was able to remember four numbers forward and three numbers backward. She was able to remember one of three objects three minutes later. She named Bush, Clinton and Bush as presidents and stated her birth date is [REDACTED]. Claimant named five large cities in the

form of Detroit, Los Angeles, Miami, Dallas, and Boca Raton. She named current family people as Cher and Tom Cruise and stated current events were gas prices and housing foreclosure.

Claimant was able to subtract sevens in one minute and stated $100 - 7 = 93, 86, 79, 72, 65,$ and 58. Claimant stated that abstract thinking the grass is greener on the other side of the fence met that somebody else's life looks better and don't cry over spilled milk met tough it out, don't be a wimp. Claimant stated in her exam that a bush and a tree were alike because they both had leaves and the difference was that trees are bigger and taller. In her judgment when asked if she found a stamped address envelope what would she do she stated that if it was ready to be mailed she would put in the mailbox for somebody and if she discovered a fire in a theater she stated you shouldn't yell fire, you tell the management quickly and then get out. Her GAF was 60 and her diagnosis was a reading disorder by report and a personality disorder, NOS, 301.9.

Diagnostic imaging from [REDACTED] dated [REDACTED] revealed mild anterior subluxation of C4 and C5 by two millimeters. There were moderate cervical degenerative changes at C5-C6 with disc space narrowing and hypertrophic spurring most prominent posteriorly. There were also degenerative changes involving L3-L4 facet joints.

There is insufficient objective psychiatric evidence indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that 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 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 as a real estate appraiser. As a real estate appraiser, her job did not require strenuous physical exertion and there is insufficient objective psychiatric information available upon which to 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.

Claimant testified that she can walk ten minutes, stand for five minutes and sit for four to five minutes at a time. Claimant testified that she is able to shower and dress herself, and she can tie her shoes if she is sitting up and picks up her leg. Claimant testified that she can't touch her toes but she can bend some at the waist but hasn't tried squatting because it is painful. Claimant testified that the heaviest weight she can carry is one pound and that she is left handed and that she has carpal tunnel syndrome. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 5. Claimant testified that in a typical day she gets up, drinks coffee, picks up around her house and then lays around for awhile and she stated that her condition is getting worse. Claimant testified that she does drive two times per week to the grocery store and to the food pantry and ten miles is the farthest she has to drive. Claimant testified that she does cook two times per week and cooks things like hotdogs and chicken and she grocery shops two times per month and needs help with carrying the packages. Claimant testified that she does clean her home by picking up, doing dishes seldom and doing laundry

occasionally. Claimant testified that she does live with her daughter and that she is single with no children under 18.

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. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment of 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 on the record that she does have depression and that she has difficulty sleeping and has severe headaches and has a history of deficits of coping and adaptability.

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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing and was able to answer all the questions and was responsive to the questions that were asked of her. 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 also based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary tasks 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, 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. Claimant is disqualified from receiving disability at Step 2, Step 3, Step 4 and Step 5. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED. However, this Administrative Law Judge finds that the Adult Medical Program was open for the month of March 2009.

Therefore, it is ORDERED that the department should assess claimant for eligibility for the Adult Medical Program for the month of March 2009 forward.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 16, 2009

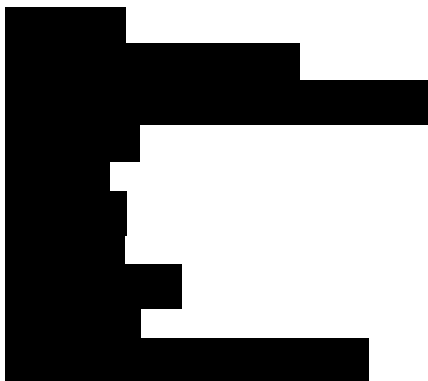
Date Mailed: April 16, 2009

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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