

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: 2009-2558
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 6, 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 January 6, 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 July 21, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 30, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.17.

(3) On October 2, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 8, 2008, claimant filed the 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 is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and pursuant to Medical-Vocational Rule 203.25.

(6) The hearing was held on January 6, 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 January 6, 2009.

(8) On January 14, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) pursuant to Medical-Vocational Rule 203.25 and stating the comments that the newly submitted information is not consistent with other records in the file. Other records indicated although she had back pain there was no sensory, motor or reflex loss. X-ray of the lumbar spine dated [REDACTED] indicated findings of mild disc space loss.

(9) Claimant is a 38-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 190 pounds. Claimant attended the 8th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in [REDACTED], at [REDACTED] as a cashier and a pizza maker. Claimant has also worked at [REDACTED] putting discs on a distributor, at [REDACTED] [REDACTED] and as a home health care aide.

(11) Claimant alleges as disabling impairments: back pain, right side numbness, asthma, ruptured disc, pinched nerve, and suicide attempt in [REDACTED] by running her car into a tree.

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

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

The objective medical evidence on the record indicates that a CT of the lumbar spine of ██████████ indicates that the alignment of the lumbar spine is normal. Fracture of the lumbar spine was not seen. There was no focal disc herniation. There was no significant neural foraminal or central canal stenosis. There is intravertebral disc space loss at L5-S1. The impression is mild intravertebral disc space loss at L5-S1. (page 1 of the new information).

A DHS-49 form contained in the file indicates that claimant's condition is deteriorating and that she can stand or walk less than 2 hours in an 8 hour workday. She can never lift any weight and needs a cane as an assistive device for ambulation. Claimant could use her upper extremities for simple grasping and fine manipulating but not reaching or pushing and pulling and cannot operate foot and leg controls. Claimant had no mental limitations. (page 57)

Claimant attended the emergency room [REDACTED] for asthma problems. The report indicated that claimant smokes cigarettes. Claimant's vital signs were blood pressure 109/63, heart rate of 100, respiratory rate of 20 and temperature 36.7 orally. Claimant was well fed, well nourished and in minimal advert distress. Claimant had no rashes, petechiae or purpura on her skin. Claimant's HEENT showed normocephalic, atraumatic. Pupils were equal, round and reactive to light and accommodation. Extraocular movements were intact. Conjunctivae and anicteric, non-injected. No oral lesions. Posterior oropharynx is erythematous, but there is no tonsillar hypertrophy or exudate. Right tympanic membrane is dusty, erythematous, slightly bulging in appearance. There does appear to be fluid behind the tympanic membrane. Left tympanic membrane was slightly dusty but non-bulging. The neck was supple, no meningismus. The patient did have muscular tenderness noted in the paraspinal region bilateral, as well as in the trapezius muscle bilateral. No stridor audible. Her chest was clear to auscultation bilaterally. Good air movement throughout. Cardiovascular S1 and S2, had regular rate and rhythm. No murmurs, rubs or gallops. The patient was alert and oriented x3. Cranial nerves 2 through 12 were intact. No focal motor or sensory deficit. She was given a prescription for Amoxicillin for a slight upper respiratory infection. (pages 22 and 23) On [REDACTED], claimant returned to the hospital for back problems. Claimant had no C-spine tenderness she had deep tendon reflexes in the lower extremities were equal bilaterally. The claimant was able to ambulant without any difficulty. She was neurovascularly intact and was discharged home with Robaxin, Motrin, and Vicodin. Claimant was able to move her back through a full range of motion but complained of significant pain with full flexion and extension. She was sitting at 9 degrees in a position of comfort. There was no midline spinous process tenderness. There was tenderness to palpation over the paraspinal muscles of the lumbar area over the right and in the right buttock. Straight leg tests were negative bilaterally. Claimant's strength and sensation were equal and

normal in the upper and lower extremities bilaterally. Her sensation was intact in the saddle area.
(page 28)

At Step 2, claimant has the burden of proof of establishing she has a severely restricted physical or mental impairment that has lasted or is expected to last for a 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 pain in her back and in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by claimant. This Administrative Law Judge cannot give weight to the treating physicians DHS-49 as it is internally inconsistent. The 49 indicates examination areas are normal with the exception of fatigue and high pain level as well as muscle weariness and in the lower extremities. There are no laboratory or x-ray findings listed on the DHS-49. The statement by claimant's physician that claimant experiences tenderness in her musculature is the only support given for the extreme physical limitations listed on the second page, which indicates that claimant cannot lift any amount of weight or use her upper extremities for any repetitive action such as reaching, pushing, and pulling. The form indicates that a cane is used for walking; however, the emergency medical room reports indicate that claimant could walk without any problem. The clinical impression is that claimant is deteriorating; however, the only finding made is that the claimant experiences pain and tenderness in her musculature. There is no medical finding that the claimant has any muscle atrophy or trauma, abnormality, or injury that is consistent with a deteriorating condition. The CT scan of the lumbar spine did not indicate a deteriorating condition. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based on the claimant's reports of pain (symptoms) rather than medical findings. Reported findings are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made.

This Administrative Law Judge find that the medical record is insufficient to establish claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. Claimant did testify that she attempted suicide in [REDACTED] and that she does feel suicidal at times, but she is newlywed and was oriented x3 during the hearing. For these reasons, this Administrative Law Judge finds the 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 or record of claimant's condition does not give rise to a finding that she would meet a statutory listing in the Court of Federal Regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was light work. Claimant was a cashier and a pizza maker. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which she has engaged 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 proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous task than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not 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 as 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 or combination of

impairments which prevent her from performing any level of work for a period of 12 months. In fact, claimant's impairments do not meet duration as she last worked [REDACTED] and would not meet duration until at least [REDACTED]. The claimant's testimony as to her limitations indicate the she should be able to perform light or sedentary work. Claimant testified on the record that she can stand for 45 minutes, and sit for 45 minutes and that she can walk from the apartment to the corner which is about 2 blocks with her cane. Claimant testified that she cannot squat and she cannot bend at the waist or tie her shoes and that her daughter helps her to dress and shower. Claimant testified that she can carry 5 pounds and that she is right-handed and that her arms are weak. Claimant stated that her level of pain on a scale from 1-10 without medications is a 10 and with medication it was a 7 ½ . Claimant testified that she does smoke two cigarettes day and that her doctor has told her to quit. Claimant is not in compliance with her treatment program, especially since she has alleged asthma as one of her disabling impairments.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant testified on the record that she does have depression based upon her situation.

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 able to answer all the questions in the hearing and was

responsive to the questions. Claimant's complaints of pain, while profound and incredible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that she does receive some relief from her pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 38), with a less than high school education and an unskilled work history, who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: To receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because a claimant does not meet the definition of disabled under the MA 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 the department of 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 or light or sedentary work even with her impairments. The department has established this 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: February 3, 2009

Date Mailed: February 3, 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 receipt 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/om

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