

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: 2009-27634

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 2, 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 September 2, 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 January 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 10, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 201.07.

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

(4) On May 8, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 8, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant underwent an appendectomy in [REDACTED]. In [REDACTED] the claimant was continuing to improve although the wound was not totally healed. Her examination was basically unremarkable otherwise. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairments would not preclude all work for 90 days.

(6) The hearing was held on September 2, 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 September 3, 2009.

(8) On September 8, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant underwent an appendectomy in [REDACTED]. In [REDACTED] she had a hernia repair. At her first follow-up she was doing well. Her wound was not totally healed, but her examination was basically unremarkable otherwise. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date

of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909.

Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairments would not preclude all work for 90 days.

(9) Claimant is a 57-year-old woman whose birth date is [REDACTED].

Claimant is 5' 4" tall and weighs 235 pounds. Claimant attended one year of college and is able to read and write and does have basic math skills.

(10) Claimant last worked November 16, 2008 at the [REDACTED] as a home healthcare aid for 12 years. Claimant has also worked as a custodian, as an aid for traumatic brain injury patients, and doing special survey interviews for the [REDACTED]

(11) Claimant alleges as disabling impairments: diverticulitis, high cholesterol, ruptured appendix, diabetes mellitus, shortness of breath, hypertension, a hernia and intestine repair, gangrene, and rotator cuff surgery in [REDACTED]

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 November 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a DHS-49 form dated [REDACTED] indicated the claimant was totally incapacitated and was on an oxygen tank after she underwent an appendectomy. (p. 17) She was given less than sedentary limitations. (p. 18) In [REDACTED] the claimant was 5' 3" and 232 pounds. Blood pressure was well controlled. Lung fields were clear. There was no cyanosis noted. She still had drainage from the abdominal wound. The area was still healing. Gait was normal. Grip strength was equal bilaterally. Gross and fine dexterity appeared bilaterally intact. (p. 6)

The claimant underwent surgical repair of an incisional hernia in [REDACTED]. (New Information, p. 7) In [REDACTED] the claimant was obese but well appearing. She was doing well status post hernia repair. Staples and drain tube were removed. Heart sounds were normal and breath sounds were clear. She had full range of motion of the extremities. An [REDACTED] clinic note indicates that claimant's blood pressure was 122/64, pulse 80, respirations 20, temperature 98. In general, claimant was an obese, well appearing woman, resting in no acute distress. Her HEENT was normocephalic and atraumatic. Cardiovascular was regular rate and rhythm, S1 and S2 within normal limits. Respiratory, lungs were clear to auscultation bilaterally. No wheezes, rales, or rhonchi. Abdomen, staples were in place and midline wound. No erythema, fluctuance, or tenderness. J-P drain in place with serosanguineous fluid in the bulb;

also without erythema or tenderness at the drain site; soft and non-distended. Her extremities had full range of motion and pulses 2+ distally. (New Information, p. 11)

The claimant had an appendectomy in [REDACTED]. Her postoperative course was complicated by wound infection requiring several months of wound packing and dressing changes for an open wound allowed to heal by secondary intention. Other surgeries were rotator cuff surgery in [REDACTED], facial reconstruction in [REDACTED], lumbar laminectomy in [REDACTED], and a caesarian section in [REDACTED], and gastric bypass in [REDACTED]. (New Information, p. 13)

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. This Administrative Law Judge finds that claimant had her initial appendicitis attack and appendectomy in [REDACTED]. She took several months to affect healing and then had a second operation in [REDACTED] for the repair of a hernia and placement of screens in her abdomen. This Administrative Law Judge finds that claimant has established by objective medical evidence that she does suffer a severely restrictive physical or mental impairment which has lasted or will last for the duration of at least 12 months. Claimant would have at least a six-week period of time in which to heal from surgery which would bring her up to the November 2009 date which would equal a 12-month duration.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

Claimant testified on the record that she does drive 3-4 times per week to the store and usually drives about 5 miles. Claimant testified that she does cook one time per day and cooks things in a slow cooker or makes sandwiches and soups. Claimant does grocery shop two times per week and uses the wheelchair cart but she needs help with reaching. Claimant does clean her

home by doing the dishes, clearing the table, and folding laundry. Claimant does care for a mentally impaired son and monitors him as he is fairly self-sufficient physically but is mentally retarded. Claimant testified that she could walk 150 feet, stand for 10 minutes, and sit for 30 minutes at a time. Claimant testified that she is able to shower and dress herself, but cannot squat because of arthritis in her knees and hip and she cannot bend at the waist because of her back, a lumbar laminectomy as well as the screens in her abdomen. Claimant is not able to tie her shoes. Claimant testified that the heaviest weight she can carry is 10 pounds and that she is right-handed and that she has problems with her right shoulder which is tight because of her prior rotator cuff surgery and bursitis. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 6 and with medication is a 4. Claimant testified that in a typical day she gets up and checks her blood sugar and then takes her medications and eats sitting in a hard chair. Claimant testified that she takes her medications and then watches television and drinks coffee with a friend. She goes to see her daughter and grandchildren. Claimant testified that she tries to walk the dog but that's too much because even though the dog is small he yanks her around and she can't do it. Claimant testified that she does watch television 10 hours a day or reads a book and she doesn't sleep well.

This Administrative Law Judge finds that claimant has established that she can probably not perform her prior work at this time with her impairments. Therefore, claimant is not disqualified 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 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 light or sedentary tasks if demanded of her. However, based upon claimant's advanced age of 57, nearly 58, a person who is limited to light work, is a high school

graduate, and who works skilled or semi-skilled jobs where the skills are not transferable is considered to be disabled pursuant to Medical-Vocational Rule 202.06. A person of advanced age who is a high school graduate who has worked unskilled or no prior jobs is also considered to be disabled pursuant to Medical-Vocational Rule 202.04. Therefore, this Administrative Law Judge finds that claimant has established that she is currently disabled for purposes of Medical Assistance and State Disability Assistance benefits from the January 12, 2009 application forward.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it denied claimant's application for 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; however, based upon her advanced age, her education, and her work history, a person who is limited to light work is considered disabled based upon her advanced age.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the claimant's January 12, 2009 Medical Assistance application, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall also determine whether or not claimant filed a retroactive Medical Assistance application and if claimant is otherwise eligible shall open an ongoing Medical Assistance case from the January 12, 2009 application forward. The department shall inform the claimant of the

determination in writing of the Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefit eligibility.

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

Date Signed: October 19, 2009

Date Mailed: October 19, 2009

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

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

LYL/vmc

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