

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: 2009-281
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 3, 2009
Ingham 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 February 3, 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 29, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 12, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 201.27.

(3) On June 17, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On September 15, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 8, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of sedentary work per 20 CFR 416.967(a), light work per 20 CFR 416.967(b), medium work per 20 CFR 416.967(c), and unskilled work per 20 CFR 416.968(a).

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

(8) On February 11, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of sedentary work per 20 CFR 416.967(a) pursuant to Medical-Vocational Rule 201.27.

(9) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 283 pounds. Claimant recently lost 20 pounds. Claimant is a high school graduate and attended one half year of college and vocational training for nurse's aide and phlebotomy. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked January 2006 at [REDACTED] as a cashier and kitchen worker. Claimant also worked security for [REDACTED] and has worked mostly fast food in her jobs. Claimant lives in Section 8 housing and is single with no children under 18 who live with her.

(11) Claimant alleges as disabling impairments: degenerative disc disease, carpal tunnel syndrome, degenerative joint disease, arthritis in her left elbow.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an in-county FIA examination on [REDACTED] showed that the claimant was well developed, well nourished, obese black female in no acute distress. She ambulated on her own using a cane very slowly. Her height was 5'10" tall. Her weight was 304 pounds. Her vital signs – her blood pressure was

130/82, pulse was 72 and regular. Respiration rate was 16. HEENT: normocephalic and atraumatic. Pupils were round, equal and reactive to light and accommodation. Extraocular muscles were intact. She did have an amblyopia of the right eye. Tympanic membranes were clear bilaterally. Pharynx is moist without erythema or exudate. Her neck with supple with free range of motion. No thyromegaly, lymphadenopathy or JVD was noted. Carotid upstrokes were good without bruits. Her cardiovascular check was regular rate and rhythm without murmurs. Normal S1 and S2. No S3 or S4. No rubs or thrills were appreciated. In her back she had good flexion. There was no straight leg raise noted and there was no CVA tenderness. Her abdomen was obese. There were good bowel sounds in all four quadrants. No masses or bruits were appreciated. No organomegaly was noted. In her extremities there was no cyanosis, clubbing or edema noted. There were good peripheral pulses palpated distally. In her musculoskeletal, the claimant did have tenderness over both of the knee joints with some mild swelling. However, she had normal range of motion. She does have fairly decreased range of motion in the hips. This had no changed significantly from her last evaluation. There was no other evidence of inflammation or tenderness in the other joints. Neurologically the claimant was alert and oriented to time, person and place. Her cranial nerves 2 through 12 were grossly intact. Motor examination showed normal power and tone throughout. Sensory exam was within normal limits. Deep tendon reflexes were 2+ and equal bilaterally. Cerebellar function was intact. Claimant was diagnosed with arthralgia. (Pages 3 and 4 of the medical reports) A DHS-49 indicates that claimant has bilateral hip degenerative joint disease and bilateral wrist carpal tunnel syndrome and bilateral hip pain. The clinical impression is that claimant is deteriorating and that she can never pick up any weight and that she cannot use her hands for anything or operate foot or leg controls. In the new information [REDACTED] indicates that claimant has developed severe

post traumatic arthritis to her elbow which significantly limits her ability for utilization of her left upper extremity. She has reasonable range of motion. She has painful motion. She has severe degenerative joint disease to both right and left hips. Her left hip is worse than her right. She needs a total hip arthroplasty. She is unable to bear weight for long periods of time and she cannot walk long distances. She can't stand for long periods. She has arthritic changes in both knees.

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 no objective clinical medical evidence in the record beyond the doctor's bold statement 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 DHS-49 as it is internally inconsistent. The 49 indicates that claimant could do no lifting, is incomplete as to whether or not she can sit or stand or walk, it indicates that she cannot use her upper extremities for anything and she cannot use her lower extremities for anything. There are no laboratory or x-ray findings listed in the DHS-49. The form indicates that assistive devices are not medically required or needed for ambulation; however, no opinion is rendered regarding how long claimant can stand or walk or sit. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant does have pain in her musculature. 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, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon claimant 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.

There is no evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. Claimant testified on the record that she has no mental impairments. 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 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 claimant again at Step 4 based upon her ability to perform her past relevant work. Claimant testified on the record that she can walk 25 yards, stand for 15 minutes and sit for 30 minutes at a time. Claimant testified she cannot squat but she can bend at the waist. Claimant testified that she is able to shower and dress herself sometimes but needed help with her socks and stepping in and out of trousers. Claimant testified that she cannot tie her shoes or touch her toes and that the heaviest weight she can carry is five pounds and that she is right handed and she has carpal tunnel syndrome in both wrists. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 9-1/2 or a 10 and with medication is a 5. Although claimant has given herself very severe restrictions, this Administrative Law Judge finds that there is

insufficient objective medical evidence to support the severe restrictions that she has given herself. Therefore, this Administrative Law Judge finds that claimant can probably perform her prior work as a cashier or as a security guard even with her impairments. There is insufficient objective medical evidence in this case which indicates that claimant could not perform a job like a security guard which does not require strenuous physical exertion. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge, will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant 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. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it related to claimant's ability to perform work. In addition, claimant did testify that she does receive substantial relief from her pain medication. 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 41), with a more than high school education and an unskilled work history, who is limited to light work is not 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 the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

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

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: March 11, 2009

Date Mailed: March 11, 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

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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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