

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: 2009-28124
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 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 9, 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 September 24, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 29, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On May 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 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 light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13, CFR 416.920(a)(f) and stated in its comments that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work based on Vocational Rule will be used.

(6) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 126 pounds. Claimant attended the 11th grade and has a GED and also attended [REDACTED] for 10 months and has vocational training in business communications. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked 2005 for [REDACTED] as a telephone receptionist account executive. Claimant has also worked as a staff assistant doing secretarial work and as a quality inspector. Claimant receives Food Assistance Program benefits and the Adult Medical Program.

(8) Claimant alleges as disabling impairments: back pain, mental issues, skin cancer, depression, ruptured lumbar, headaches, neck and shoulder pain, and digestive problems.

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] medical report indicates that claimant was diagnosed with squamous cell carcinoma in situ (Bowen's Disease). The growth extended to the lateral margins of the excision. There was no evidence of invasion in these sections. (p. A) On [REDACTED] dermatology send a form indicating that claimant was diagnosed with anal warts. A medical report of [REDACTED] indicates that on examination the claimant was alert and cooperative. She had a lot of anxiety. She walked slowly. She did not have a cane or other assistive device. She did not use a neck or back brace. The claimant weighted 128 pounds. Blood pressure was 130/80. Height was 5' 4" tall. Vision without glasses was 20/30 on the left and 20/30 on the right and 20/30 bilaterally. Clinically, the claimant

was not jaundiced. The claimant's gait was normal. The claimant was able to get on and off the examination table. The claimant could raise both arms above head level but complained of pain affecting the right shoulder. Her HEENT was normocephalic. External eye movements were intact. Pupils were equal and regular, reacting to light and accommodation. Fundus was intact. Ears, nose, and throat were benign. Neck was supple. No thyromegaly. No venous engorgement. Trachea was central. No carotid bruit. The chest moved normally on either side. Respiratory movements were normal. The chest was clear to auscultation and percussion. No rhonchi or rales noted. Cardiovascularly, heart size was normal. There was no audible murmur. JVD was not raised. Air entry was equal. No adventitious sounds. Trachea was midline. Abdomen was soft. No masses felt. Bowel sounds were normal. No evidence of hernia. Spleen was not palpable. No ascites. In the bones and joints straight leg raising was equal bilaterally. All peripheral pulses were equal and good bilaterally. There was no wasting of muscles. Handgrip was equal. The claimant complained of pain with neck and back movements. Her cervical spine movements were restricted to about 65-70% of normal range. Her lower back movements were restricted to about 50% of normal range. There was no kyphoscoliosis. In the nervous system cranial nerves II-XII were grossly intact. No gouty deformities or nodules noted. Sensory: touch, pinprick and sensation were normal. Plantar was flexor bilaterally. Cerebellar function was normal. Motor strength was equal bilaterally. Plantar reflex was flexor. The deep tendon reflexes were 2+ in the upper and lower extremities. Heel-to-knee and finger-to-finger, finger-to-nose testing was normal. The gait was normal. No wasting of muscles. Speech and memory appeared to be normal. Orientation was normal. The claimant's general health was good. No leg ulcers. The conclusion was that this 51-year-old female suffers with nonspecific headaches and sinusitis. She had chronic pain affecting the neck, back, and knees. The claimant had a past history of cocaine

abuse, chronic anxiety, and depression. There was no evidence of hypertension, heart problems, or asthma. (pp. 4-5 of the Medical Reports)

A [REDACTED] formal mental status evaluation indicates that the claimant was on time, looking her reported height of 5' 5", and average weight. She drove herself and was dressed in a casual, neat manner with adequate grooming. She put forth effort and the MSE tests appear valid. She had normal posture and gait. She did not show pain behaviors. She appeared in contact with reality with a cooperative attitude and serious-minded behavior. She reported self-esteem was poor. She seemed relaxed, rather than anxious, but depressed rather than content. She was autonomous in giving her history and did not appear to be exaggerating or misrepresenting herself. She didn't have much insight. She was spontaneous, logical, and organized with normal speech. No florid hallucinations or delusions demonstrated, but she complained that sometimes she hears people or something behind her, but when she turns around no one is there. She seemed depressed with a flat affect, and was able to be friendly for the most part. She was oriented for time, person, place, and purpose. She was able to repeat five numbers forward and three backward. She denied suicide and homicide ideas. She recalled one of three objects after three minutes of interpolated interview activity. She named three presidents as Nixon, Bush, and Carter. She knew her birth date and social number. She named five large cities as Detroit, New York, Florida, Mississippi, and Tennessee. She didn't see her error of giving states, when she was asked for cities. Three famous living people were Bill Gates, Obama, and Jennifer Granholm. Two current events were the AID stock decline and a three-car accident and the police chase this morning. She was correct for 2×8 , $11 + 17$, but wrong for 24 divided by 8 which she said was 4. She spelled the WORLD backwards without error. Serial 7's in 60 seconds: 100, 94, 86, 77, 70, 62, 55, 48, 41, 34, 29, 22, 15, 8, and 1. Serial three in 30 seconds: 30, 27, 24, 21,

18, 15, 12, 9, 6, 3, and 1. Abstract thinking the grass is greener proverb she stated the grass always looks greener when you're at a distance. Her translation of the proverb don't cry over spilled milk was because it's already a waste. For similarities and differences when asked how a bush and a tree were alike she said they're nature. When asked how they were different she stated the size. When asked what she would do if she found a stamped, addressed envelope on the sidewalk she said put it in the mailbox. When asked what to do if she discovered a fire in a crowded movie theater she said get security. When asked what her plans for the future were, she said get myself back to a normal lifestyle. She appeared able to manage funds and activities of daily living. Her abilities to perform work-related activities despite alleged impairments would seem impacted and left to her own resources she has not been able to pull off working for four years. Her depression probably magnifies her pain, and pain magnifies her depression. She had no neuro-cognitive problems. She did show problems in memory, attention, and concentration which might show up in more objective forms. (pp. 11-13)

A Mental Residual Functional Capacity Assessment in the record indicates that she was markedly limited in approximately six areas and moderately limited in six areas, but not significantly limited in nine areas of assessment. (pp. 17-18)

A Medical Examination Report in the file dated [REDACTED] indicates that claimant was normal in all areas of examination except she had low back pain and headaches. She was 5' 5", 135 pounds. She could occasionally lift 10 pounds or less and frequently lift less than 10 pounds. No assistive devices were medically required or needed for ambulation. (pp. 23-24)

A second Mental Residual Functional Capacity Assessment in the record dated [REDACTED] [REDACTED] indicates that claimant was only moderately limited in six areas and not significantly limited in most other areas. (pp. 27-28)

The claimant testified on the record that she does have a driver's license and does drive one time per week to the store and usually drives to the next corner about two miles. Claimant testified she does cook 1-2 times per week and cooks things like toast, eggs, and fries bacon. Claimant testified that her daughter grocery shops for her and she usually only straightens up her bed. Claimant testified that her hobby is writing. Claimant stated that she can walk two blocks slowly, stand for an hour, and sit for 20-30 minutes at a time. Claimant testified that she can shower and dress herself now and then and that she can squat with pain and bend at the waist and sometimes tie her shoes but not touch her toes. Claimant testified that she usually sleeps about 20 hours a day. Claimant testified that the heaviest weight she can carry is 5 pounds and that she is left-handed and that her hands are okay, but her arms are painful to lift. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 7/8. Claimant testified that she does continue to smoke 3-4 cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant testified that her knees swell and that in a typical day she gets up and tries to make her bed and get her clothes on. Then she sits at the computer for an hour and lies down and reads and sleeps, wakes up and eats, and then sleeps because of the medication for most of the day.

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. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment.

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).

Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person, and place during the hearing. 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. 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 that claimant has a severely restrictive physical impairment which has kept her from working for a period of 12 months or more.

There is insufficient objective medical evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. 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. Claimant's past relevant work was light and sedentary work. As a receptionist, account executive, secretary or quality inspector, these jobs do not require strenuous physical exertion. There is insufficient medical or psychiatric evidence upon which this Administrative Law Judge could 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.

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. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work even with her impairments. 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. In addition, claimant did testify that she does receive some relief from her pain medication. 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 person with claimant's vocational background and a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.13 and CFR 416.920(a)(f).

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: November 3, 2009

Date Mailed: November 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.

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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

cc:

