

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: 2009-28338
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2009
Ogemaw County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 August 18, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother [REDACTED]

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 April 7, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 15, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 21, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On May 26, 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 (SHRT) also denied claimant's application stating she was capable of performing other work, namely light unskilled work per Vocational Rule 202.20.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for review. On January 7, 2010, SHRT again determined that the claimant was not disabled, as she was capable of performing light unskilled work.

(7) Claimant is a 46 year-old woman whose birth date is [REDACTED]. Claimant is 5'5 1/2" tall and weighs 127 pounds. Claimant has an associate degree in graphic design and topography, and can read, write and do basic math.

(8) Claimant states that she last worked in 2001 for [REDACTED] for a year, as an illustrator processor checking engine parts, job she was laid off from. Claimant had also been a waitress prior to year 2000. Claimant states a friend and her sister gave her financial support since 2001.

(9) Claimant currently lives in a camper behind another person's house with no electricity and receives food stamps.

(10) Claimant alleges as disabling impairments: Raynaud's, nerve damage, degenerative disc disease, rheumatoid arthritis, circulatory disease, and vitamin D deficiency.

(11) Claimant has applied for Social Security disability and been denied, and is appealing this denial and waiting for an SSA hearing.

CONCLUSIONS OF LAW

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).

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).

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 does 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 testified that she has not worked since year 2001. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a

minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes

Pain Management clinic visit of [REDACTED] indicates that the claimant returns with recurrent posterior neck pain and bilateral shoulder. Claimant has responded well to cervical epidural steroid injections in the past for diagnosed cervicalgia with muscle contraction headache. A cervical epidural steroid injections with the first procedure scheduled for [REDACTED] was performed. On [REDACTED] claimant was discharged from the Pain Management clinic following her procedure with a pain score of 3 and was to return to her primary care physician.

Progress Note of [REDACTED] visit quotes as claimant's chief complaints light neck pain, bilateral elbow pain, and difficulty using the hands. Claimant's diagnosis is chronic pain syndrome, chronic neck pain and back pain, myofascial pain syndrome, bilateral lateral epicondylitis, and bilateral carpal tunnel syndrome. Claimant reported that the cold weather flares up her back pain, bilateral elbow pain and wrist pain, and she is having difficulty using the hands, especially while opening jars. Claimant was independent in activities of daily living and ambulated without any gait aid.

On physical examination claimant was alert and oriented and smelled of alcohol. Range of motion in the upper and lower extremities as well as cervical and lumbar spine is functional. Manual testing was 5/5 throughout, sensory examination unremarkable, and deep tendon reflexes 2+ symmetric throughout. Claimant had tenderness on palpation over the lateral epicondyle bilaterally, there was increased pain in the elbows with resisted wrist extension, and she had some difficulties with tandem walking. Claimant was continued of MS Contin and Flexeril, and scheduled for injection in bilateral lateral elbows.

Pain Management clinic's note of [REDACTED], indicates that the claimant was scheduled for followup on three occasions since September, 2008, but failed to appear for any of her scheduled appointments.

Medical Examination Report of [REDACTED], states that the claimant's current diagnosis is cervicalgia with muscle contraction headache. Claimant's condition is noted as stable, and no physical or mental limitations are listed.

Medical Examination Report of [REDACTED] states as claimant's diagnosis chronic pain syndrome, chronic neck pain and back pain, myofascial pain syndrome, bilateral lateral epicondylitis, and bilateral carpal tunnel syndrome. Laboratory and x-ray findings are those of MRI right shoulder of [REDACTED], showing degenerative changes on the mid cervical region. Claimant was limited to lifting/carrying less than 10 lbs. frequently and 10 lbs. occasionally, standing/walking less than 2 hours in an 8-hour workday, but had no limitations in using her hands/arms for repetitive actions and using her feet/legs for operating foot/leg controls. Claimant had mental limitations in memory, sustained concentration and social interaction, but alcohol use was mentioned.

[REDACTED], MRI of claimant's lumbar spine indicates degenerative changes, which are most severe at the L5-S1 level, with loss of disk height, signal changes within the disk. There is a mild diffuse disk bulge. There is no evidence of a significant spinal stenosis or disk herniation.

MRI of claimant's thoracic spine of [REDACTED] states that the vertebral body heights and alignment are well-maintained, there are no significant degenerative changes, the spinal cord is unremarkable, and a gross abnormality is not seen.

Claimant was at her doctor's office on [REDACTED] smelling of alcohol. Medical Examination Report for an exam of this date indicates that all of claimant's examination areas

are normal, that her condition is stable, but that she can never lift any amount of weight and that she is in “constant pain”. Claimant can meet her needs in her home without assistance.

██████████, Social Summary form has comments from the DHS interviewer that the claimant smelled quite strongly of alcohol, even though she claimed she did not drink anything since last night, and the interview was taking place at 1:30 PM. Claimant wore wrists bands on both wrists and arm bands on both upper arms, but removed them all to complete paperwork. Claimant moved around a lot, but did not appear to be in any pain, although the lack of obvious pain may be the result of her medications, which she named as morphine and Flexeril.

Progress Note of ██████████, indicates that claimant continues to complain of neck and back pain for which she is taking MS Contin and Flexeril. Claimant reported living in a camper. Claimant was fidgety, alert, oriented, and answered appropriately to the questions. Claimant continues to display mild tenderness on palpation over the cervical paraspinals bilaterally. Claimant has functional range of motion in the cervical spine, however, limited in all plains including flexion, extension and rotation. Claimant has functional range of motion in the upper extremities. Manual muscle testing is functional in the upper extremities. There are no reported deficits to light touch or pin prick in the upper extremities, and deep tendon reflexes are 2+ and symmetric. Claimant’s range of motion in the lumbar spine is limited in extension, negative straight leg raising bilaterally, and Babinski is negative bilaterally. No sensory deficit is reported by the patient to light touch or pin prick in the lower extremities. Claimant was to continue home exercise program as previously trained in, and continue medications as previously described.

Medical Examination Report for an exam of ██████████, indicates that the claimant is disheveled and ETOH chronic user, that she has chronic pain and generalized weakness in

upper extremities more than lower extremities, and that she has upper extremity peripheral polyneuropathy.

██████████ Pain Management clinic report states that the claimant has completed caudal epidural steroid injection on ██████████ ██████████, for L5-S radiculopathy, and that she was discharged with a pain core of 0.

Medical Examination Report for an exam of August, 2009 list all of claimant's examination areas as normal except for weakened hands and legs, her condition as stable, but then states that the claimant can never lift any weight, cannot use her hands/arms for any type of repetitive movement, and cannot operate foot/leg controls, even though she does not need any assistive devices for ambulation and can meet her needs in the home without assistance.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant has therefore met her burden of proof at Step 2, and analysis continues.

The analysis proceeds to Step 3 where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, claimant has very sporadic work history and has not worked since 2001. Claimant's past relevant work was checking engine parts at a GM factory and as a waitress. Claimant would most likely not be able to perform a job that would involve a lot of walking or bending, or carrying heavy materials, which a factory job and a waitress job may require.

Finding that the claimant is unable to perform work which she has engaged in in the past could therefore be reached.

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 other 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that she is physically unable to do at least sedentary work if demanded of her. Claimant's treating sources have indicated severe limitations in her ability to function physically, but such severe limitations are not supported by the medical evidence presented. It is also noted that the claimant apparently has a significant alcohol abuse issues, as she smelled of alcohol during medical exams and during DHS interview. Claimant's hearing testimony is that she has not used alcohol in the last 2-3 weeks and is trying to get the problem under control. Claimant's mother also testified that she is trying to keep her from drinking. Claimant's alcohol issues and not only her physical problems may be part of the reason as to why she has not held a job since 2001 and is currently claiming she is unable to work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 at least sedentary and possibly light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 46), with high school education or more

(claimant has an Associate Degree) and an unskilled work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical ability to do basic work activities. 20 CFR 416.920(c). However, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 sedentary and possibly light work even with her

alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 18, 2010

Date Mailed: February 22, 2010

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

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

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