

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: 2009-28611

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 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 October 21, 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 11, 2008, claimant filed an application for Medical Assistance benefits and State Disability Assistance benefits as well as retroactive Medical Assistance benefits alleging disability.

(2) On May 11, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.12.

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

(4) On June 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 28, 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 202.10.

(6) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3-1/2" tall and weighs 180 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 2003 as a temporary service line worker in a factory. Claimant has also worked as a grill cook at [REDACTED] and at a temporary job packing parts.

(8) Since 2003 claimant has stayed with a friend and receives Food Assistance Program and the Adult Medical Program.

(9) Claimant alleges as disabling impairments: hypertension, asthma, back pain, arthritis, vision deficit, swelling in the legs, blind in left eye, congestive heart failure, stomach problems, gout, and high cholesterol. Claimant alleged no mental impairments.

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 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] a [REDACTED] [REDACTED] examination was performed. Claimant lost the sight in her left eye six years ago after being hit in the head with a vase. Otherwise, her health history is unremarkable. The left eye is shrunken. Her right had 20/50 vision and the left eye could not be refracted. Her best corrected vision in the right eye was 20/30 +2 for distance. Her left eye is totally and

permanently blind. Claimant could not do any work that requires depth perception and needs glasses for near vision only. (pp. A1-A2)

A physical examination report in the file indicates claimant was well-developed, well-nourished, cooperative, and in no acute distress. She was awake, alert, and oriented x3. She was dressed appropriately and answered questions fairly well. Her height was 5' 3" tall. Her weight was 182 pounds. Pulse was 61. Respiratory rate was 16. Blood pressure was 138/96 and 136/92, and 134/91. Visual acuity without glasses was 20/70 on the right and she could not see the eye chart on the left. HEENT: normocephalic/atraumatic. Eyes: The examinee had no vision in the left eye and opacification of the left eye and extraocular movements were intact. The pupil was not reactive on the left. Ears: No discharge in the external auditory canals. No bulging erythema, perforation of the visible tympanic membrane noted. Nose: There was no septal deformity, epistaxis or rhinorrhea. Mouth: Teeth were in fair repair. Neck: Supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. ENT: External inspection of the ears and nose revealed no evidence of acute abnormality. RESPIRATORY: The chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi, or wheezed noted. No retractions noted. No accessory muscle usage noted. No cyanosis noted. There was no cough. CARDIOVASCULAR: Normal sinus rhythm. S1, S2. No rubs, murmur, or gallop. GASTROINTESTINAL: Soft, benign, non-distended, with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen were not palpable. SKIN: No significant skin rashes or ulcers. EXTREMITIES: There was a slight limp on the left side. No obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic

leg ulcers and muscle atrophy or joint deformity or enlargement was noted. BONES AND JOINTS: The claimant did not use a cane or aid for walking. The claimant was able to get on and off the table without difficulty. She had a slight limp on the left side. Stance was normal. Tandem walk, heel walk, and toe walk were done slowly. She was able to squat to 40% of the distance and recover, and bend to 90% of the distance and recover. Grip strength was equal bilaterally. The claimant was right-handed. Gross and fine dexterity appeared bilaterally intact. Abduction of the shoulders was 0-150. Flexion of the knees was 0-150. Straight leg raising while lying 0-50, and while sitting 0-90. NEUROLOGIC: General: The claimant was alert, awake and oriented to person, place, and time. Cranial Nerve II: Vision as stated in vital signs. III, IV, VI: The claimant has no vision in left eye and opacification of the left eye and extraocular movements were intact. The pupil was not reactive on the left. V: No facial numbness. Symmetrical response to stimuli. VII: Symmetrical facial movements noted. VIII: Can hear normal conversation and whispered voice. IX, X: Swallowing intact. Gag reflex intact. Uvula midline. XI: Head and shoulder movement against resistance was equal. XII: No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory Functions: Intact to sharp and dull gross testing. Motor Exam: Revealed fair muscle tone without flaccidity, spasticity, or paralysis. Decreased vision on the left side, opacification, no pupillary reaction on the left side. The impression was claimant had limited vision in the left eye, chronic back pain, gout, hypertension which was under fair control, and hyperlipidemia. Claimant's gout had occasional flare-ups. (pp. A7-A8) Claimant had normal range of motion in all areas. (pp. A9-A10)

A Physical Residual Functional Capacity Assessment in the record dated [REDACTED] indicates that claimant could occasionally lift twenty pounds, frequently lift ten pounds, and stand and/or walk about six hours in an eight-hour workday and could sit about six hours in an eight-hour workday. The claimant's ability to push or pull including operation of hand and foot controls was unlimited. Her grip strength was 5/5. Claimant could occasionally climb stairs, balance, stoop, kneel, crouch, and crawl. She did not have any manipulative limitations. Visual limitations were already stated. She had no communicative limitations and no environmental limitations.

A Medical Examination Report in the file dated [REDACTED] indicates that claimant was normal in all examination areas except she had mild to moderate tenderness in the paraspinal area and moderate pain and swelling in the left knee. The clinical impression was that she was stable and she could stand and/or walk less than two hours in an eight-hour workday. She did not require assistive devices for ambulation and she could use both of her upper extremities for simple grasping, reaching, and fine manipulating but not pushing/pulling and could not operate foot and leg controls. (pp. 10-11)

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. Claimant has reports of pain in multiple areas of her body; however, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant.

There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In fact, the clinical impression is that claimant is stable. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon the claimant's 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. Claimant testified that she doesn't have any 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 doing line work and doing [REDACTED] grill work. This Administrative Law Judge finds that there is insufficient medical evidence in this file which would establish that claimant cannot 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. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

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. Claimant testified that she doesn't have a driver's license, but she does walk or take the bus. Claimant walked to the hearing and walked about twelve blocks. Claimant does cook one time per day and cooks things like chicken, rice, turkey, and potatoes. Claimant does grocery shop one time per month and usually needs help getting things and needs a ride. Claimant testified that she cleans her room and sometimes cleans the kitchen and does dishes, makes the bed, and does laundry. Claimant testified that her hobby is reading and that she can usually walk five blocks with her cane as prescribed by the doctor and can stand thirty minutes and can sit an hour to an hour and a half at a time. Claimant is able to shower and dress herself, squat, bend at the waist, and tie her shoes if she's sitting down. Claimant can touch her toes if she's sitting down. Claimant testified the heaviest weight she can carry is ten pounds and that she is right-handed and that she does have some numbness in her hands. Claimant testified she does have some swelling in her legs. Claimant testified that her level of pain on a scale from one to ten without medication is an eight and with medication is a five. Claimant testified that she stopped

drinking and smoking cocaine approximately four years before the hearing. Claimant testified that in a typical day she gets up, washes up, takes her pills, then makes her bed, reads, watches television, and does her calls for appointments. Claimant testified that she was in the hospital in September for congestive heart failure.

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.

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, p. 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: January 7, 2010

Date Mailed: January 7, 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.

LYL/vmc

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