

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: 2009-30120
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 15, 2009
Macomb 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 15, 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 3, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 21, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

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

(4) On May 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 30, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a) and commented that the claimant's mental impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record does not document a physical impairment that significantly limits the claimant's ability to perform basic work activities. The medical evidence of record indicates that claimant retains the capacity to perform unskilled work. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on September 15, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on September 21, 2009.

(8) On September 23, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 204.00(H) and stated that the new information submitted does not significantly change or alter the previous SHRT decision.

(9) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3" tall and weighs 130 pounds. Claimant has two years of college in general education and is a high school graduate. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked two years ago at a cleaning company cleaning offices but quit because the owner was mean. Claimant has also worked as a waitress for 19 years.

(11) Claimant alleges as disabling impairments: posttraumatic stress disorder, asthma, anxiety, depression, back pain, long periods, in need of a hysterectomy and enlarged uterine fibroids, as well as panic attacks and crying jags.

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 for the last two years. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an [REDACTED] medical imaging and diagnostic radiology test of the transabdominal and transvaginal imaging indicates that claimant has an enlarged uterus with fibroid changes on clinical examination. There was a large uterus exhibiting diffuse fibromyomatous changes with one focal intramural fibroid seen along the left uterine body with possible indentation of the endometrium as described. The ovaries were not seen, but no adnexal masses were noted. (p. 3) There was no evidence of free pelvic fluid. (p. 5) A licensed psychologist indicated on [REDACTED] that claimant has been seen for outpatient psychotherapy and medication beginning [REDACTED]. Claimant was diagnosed with major depression, social anxiety, and posttraumatic stress. She reported a long history of abuse in her family of origin and during her 25-year marriage. She reported depression with crying spells, withdrawal, and mood lability. She reported severe anxiety and panic symptoms associated with being in public. She has flashbacks, numbing, avoidance and period of increased anxiety and depression and a family history of bipolar disorder and is being screened for diagnostic clarity. Claimant felt that her emotional symptoms do not allow her to resume employment. (p. 6)

A [REDACTED] report dated [REDACTED] indicates that claimant's contact with reality was good. Self-esteem was impaired. Motor activity was unremarkable. Claimant presented as anxious but cooperative. Insight and judgment were poor. Claimant's speech was adequately organized and goal directed. She denied having hallucinations, delusions, thought control, or unusual powers. She reported having suicidal thought all the time but has not attempted. She stated she has made plans many different times

but because of my love for daughter and granddaughter I couldn't do it. She reported having problems sleeping, having nightmares where she wakes up crying. She is paranoid about her ex-husband because he beat her up in the past. Claimant reported that her mood was sad and her affect was anxious. Claimant was oriented x4 and she could remember five numbers forward and three numbers backward. She could recall three of three items three minutes later. For presidents she named Obama, Bush, Clinton, and the rest she didn't remember. Her date of birth was [REDACTED] and she is 46. She names Alexander Graham Bell as the inventor of the telephone; Edison was famous for electricity—he invented it. Neil Armstrong was the first person on the moon. Lansing is the capitol of Michigan but she could not recall the name of the governor of Michigan. For cities she named New York, Los Angeles, Detroit, Paris, and Hong Kong. Famous people were Barack Obama, Tom Cruise, and Jay Leno. In events she said the former mayor of Detroit got a job in Texas and there's something with peanut butter. For calculations, backward calculations from 100 were 100, 93, 83, 79, 72, 65; $3 \times 4 = 12$; $25 / 5 = 5$; $17 + 8 = 24$; $25 - 11 = 14$. In abstract thinking that the grass is always greener on the other side she stated that you always think what someone has is better. Don't cry over spilled milk is to be grateful for what you have. Similarities between an orange and a banana both are fruit, difference is there shape. The similarity between a car and a bicycle are they both have wheels, difference is one is enclosed and one is not. For judgment if she found a stamped, addressed letter she would mail it. If she saw a fire, she would scream. She stated she didn't have any plans for the future. Her prognosis was fair with ongoing treatment and she was able to manage her finances independently. She was diagnosed with posttraumatic stress disorder, asthma, bronchitis, and no independent residence, and her Axis GAF was 50. (pp. 15-17)

A Mental Residual Functional Capacity Assessment in the file indicates that claimant is only markedly limited in the ability main attention and concentration for extended periods and the ability to accept instructions and respond appropriately to criticism from supervisors. She was only moderately limited in most other areas. It was noted that claimant has lost two jobs related to temper and emotional outburst problems and that she has difficulty working with the public without overreacting with anger. She has been responsible about keeping her appointments and has improved her ability to control her anger utilizing therapy and medication. (pp. 8-9)

A Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination and that she was 5' 3" tall and weighed 130 pounds. Her blood pressure was 130/80 and she was right-hand dominant. The clinical impression was that claimant is deteriorating but she had no physical limitations and was able to occasionally lift 50 pounds or more and frequently lift 20 pounds or less. Claimant was able to stand or walk less than two hours in an eight-hour day and sit less than six hours in an eight-hour day. She could use her upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and she could operate foot and leg controls with both feet and legs. Claimant did have some mental limitations in the form of memory, sustained concentration, and social interaction. (pp. 2-3)

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 testified on the record that she does have a driver's license and she does drive one time per day and usually goes

to buy cigarettes at the store or to the grocery store. Claimant does live with her boyfriend in a house and she is single with no children under 18. Claimant testified that she does cook four times per week and she cooks pre-packaged meals and that she grocery shops one time per month with no help. Claimant does clean her home by doing the dishes, laundry, and vacuuming and she can walk with no limits, stand for 20 minutes, and sit for four hours at a time. Claimant testified that she is able to shower and dress herself, as well as squat, but not bend all the way and that she can tie her shoes but not touch her toes. Claimant that the heaviest weight she can carry is 20 pounds and she can carry 5-10 pounds on a repetitive basis. Claimant testified that she is right-handed and that her hands are numb sometimes. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 5/6. Claimant testified that she does smoke a pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant testified that she does drink one time per month and drinks vodka until she passes out and her doctor has told her to quit. Claimant testified that she stopped smoking marijuana a long time ago. Claimant testified that in a typical day she gets up and drinks coffee, lets the dogs out, watches a television show, and goes to bed until 10:00 to 10:30 a.m., then she lets the dogs out, and sits in front of the TV for the rest of day. She does do some laundry and cleans and then she stays up from 3:00 to 5:00 a.m.

The clinical impression is that claimant is deteriorating; however, there is no finding made 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.

Claimant testified on the record that she does have posttraumatic stress disorder, anxiety, and depression as well as panic attacks.

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).

There is insufficient objective medical/psychiatric evidence in the file indicating claimant suffers mental limitations resulting from her reportedly depressed state. The Mental Residual Functional Capacity Assessment in the record indicates that claimant is only moderately limited in most areas, and that she is improving with therapy and medication. 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. In addition, based upon claimant's medical records, it is documented that she has heavy use of alcohol which would contribute to her physical and any alleged mental problems. 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 as a janitorial person or as a waitress. Neither job requires extreme physical exertion and that she does not have any physical limitations which would not allow her to do her prior work. There is insufficient objective medical 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. Claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes

relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The 1996 amendment provides that an individual should not be considered to be disabled for purposes of disability if alcoholism or drug addiction would but for this sub-paragraph would be a contributing factor material to the determination that the individual is disabled. Claimant does continue to drink alcohol despite the fact that her doctor has told her to quit. In addition, the claimant does continue to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

For the foregoing reasons, claimant is disqualified from receiving disability at Step 5. Under the Medical-Vocational guidelines, a younger individual (age 46), with a high school education and an unskilled work history who is limited to light work is not considered 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. BEM and 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 claimant is disqualified from receiving benefits at Step 2, Step 3, Step 4, and Step 5. 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 16, 2009

Date Mailed: November 16, 2009

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

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

LYL/vmc

cc:

