

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: 2009-36283

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 2009

Bay County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant does not meet the disability requirements for 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) March 2009, claimant was a recipient of SDA. Her assistance was due for medical review.
- (2) June 8, 2009, the Medical Review Team (MRT) denied claimant's SDA medical review. Department Exhibit A.

(3) June 11, 2009, the department sent claimant written notice that the SDA review was denied.

(4) July 21, 2009, the department received claimant's timely request for hearing.

(5) September 28, 2009, the State Hearing Review Team (SHRT) denied claimant's SDA medical review. Department Exhibit B.

(6) October 21, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by fibromyalgia, depression, anxiety, insomnia, and post traumatic stress disorder. Claimant believes she may have multiple sclerosis and/or sleep apnea.

(8) Claimant testified at hearing. Claimant is 39 years old, 5'9" tall, and weighs 180 pounds. Claimant completed a bachelor of science in accounting. Claimant's driver's license is revoked due to claimant having seizures. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as an office manager, accountant, grocery cashier, grocery manager, and in security.

(10) At last positive decision in December 2008, claimant was diagnosed as having bipolar disorder; history and was currently mildly depressed. Claimant had anxiety disorder; history of polysubstance abuse; with [REDACTED] and nicotine dependence, continuous. GAF was assessed at 50. Claimant reported that she has had depression and anxiety since 2006. She was discharged from hospital during August 2008 following treatment for suicidal ideation. The report indicates doctor believes claimant is fairly stable and has been compliant with her medications. Medications were in the process of being changed and adjusted. Department Exhibit A, pgs 34-35.

(11) At last positive decision, claimant's physician completed a Medical Examination Report (DHS-49) September 23, 2008 following physical examination on September 22, 2008. Doctor indicates diagnoses of lumbar pain with spasms; major depression; fibromyalgia; and seizure disorder secondary to medication. Doctor indicates a normal physical exam with the following exceptions: lumbar pain with spasms; history of seizures; mild disorientation. Doctor opines that claimant's condition is deteriorating and she is able to occasionally lift less than ten pounds; is able to stand and/or walk less than two hours in an eight-hour workday; is able to sit less than six hours in an eight-hour workday; but is able to perform a full range of repetitive actions with both upper extremities. Department Exhibit A, pgs 26-27.

(12) At review, claimant's physician completed a Medical Examination Report (DHS-49) on May 14, 2009 following physical exam that same date. Doctor indicates diagnoses of fibromyalgia, anxiety disorder, post traumatic stress disorder and major depression. Physical exam is noted to be within normal limits with the exception of slow speech and blunt affect. Doctor indicates similar limitations as last positive decision. Department Exhibit A, pgs 13-14. April 23, 2009, claimant's therapist completed a Psychiatric/Psychological Examination Report (DHS-49-D) following treatment on April 21, 2009. Treatment professional indicates diagnoses of major depressive disorder, recurrent, severe and post traumatic stress disorder. Current GAF is assessed at 56 with lowest in the past year 49. Claimant was oriented x 3. Memory was adequate. Concentration had deficits. Judgment is fair. Abstract thinking was impaired. There was no evidence of delusional or hallucinatory thoughts. Treating professional also completed a Mental Residual Functional Capacity Assessment (DHS-49-E) indicating that claimant is markedly limited in 2 of 20 areas of functioning; moderately limited in 7 of 20 areas of functioning; and not significantly limited in 11 of 20 areas of functioning. Department Exhibit A, pgs 15-18.

Claimant underwent an independent physical exam on December 23, 2008 and a narrative report was prepared. In pertinent part, patient was alert, well oriented, and cooperative. Affect, dress, and effort were appropriate. Patient's memory was intact with normal concentration but there was an element of confusion when answering questions. Speech was rather slowed and deliberate. There was no evidence of joint laxity, crepitus, or effusion. There is full fist and full grip strength bilaterally. Dexterity was unimpaired. Patient was able to pick up a coin, button clothing, and open a door. Patient had no difficulty getting on and off the exam table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping. Range of motion studies of the joints was full. Cranial nerves were intact. Motor strength was normal and tone appeared normal. Sensory is intact to light touch and pin prick. Reflexes were intact and symmetrical. Romberg testing was negative. Straight leg raising was accomplished to 90 degrees bilaterally. Patient walked with a normal gait without use of an assistive device. Conclusions were that claimant is being followed by a psychiatrist for anxiety and depression; claimant has seizure activity that does not present in a classic pattern; there are symptoms of asthma but claimant also smokes one and a half packs of cigarettes per day, pulmonary exam was unremarkable; fibromyalgia under treatment with Lyrica. Patient reports specific areas including hip and knee that are affected. Doctor opined that possibly arthralgias are confused with fibromyalgia. Department Exhibit A, pgs 8-10.

(13) When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical and mental condition has occurred or that claimant was not disabled. At last positive decision, claimant was recently released from the hospital after being treated for depression and suicidal ideation. Claimant had improved, but her improvement was not sustained

as it was at medical review. At last positive decision, claimant had low back pain and muscle spasms. At review, claimant has either fibromyalgia or arthralgias that affect her hip and knee.

Claimant has no functional impairments due to this condition.

(14) Claimant's medical improvement is related to the ability to work.

(15) Claimant is capable of performing simple, unskilled light work.

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 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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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's impairments do not meet or equal any Social Security listing.

Finding of Fact 11-15.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has medically improved at medical review. At last positive decision, claimant was recovering from severe depression and suicidal ideation. She was in the early stages of recovery. At medical review, claimant appeared to be in sustained improvement of her mental illness. At last positive decision, claimant has either fibromyalgia or arthralgia affecting her hips and knees. Claimant has no physical impairments due to this condition. Finding of Fact 10-15.

At Step 3, claimant's medical improvement is related to her ability to perform work. Claimant's mental condition has improved. Claimant's physical condition has improved. Improved mental and physical functioning enable claimant to perform work activities. The record does not establish that claimant has severe physical impairments. It is noted that claimant asserted issues with migraine headaches. No objective medical evidence was submitted to establish that claimant has severe impairments due to this condition. See discussion at Step 2 above. Finding of Fact 10-15.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Step 3 above.

At Step 5, claimant does not have current severe impairments. Claimant is being treated for depression, but is stable on medication. Claimant has hip and knee pain, but no physical impairments due to this condition. See discussions at Steps 2 and 3 above. Finding of Fact 10-15.

At Step 6, claimant's past relevant employment has been as an office manager, accountant, grocery manager, grocery cashier, and in security. Finding of Fact 9. The record appears to establish that claimant may have difficulty performing the tasks required by cashier job due to pain in hips and knees. The objective medical evidence is sufficient to establish

claimant is able to perform other past relevant employment. See discussions at Steps 1-5 above.

Finding of Fact 9-15.

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).

At Step 7, see discussions at Steps 1-6 above. The record appears to establish that claimant is capable of performing at least unskilled, light work activities. Finding of Fact 10-14.

After careful examination of the record and for the reasons discussed at Steps 1-7 above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent all work for 90 days or more at medical review. Therefore, claimant does not meet the disability requirements for SDA based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services has established that claimant is no longer disabled for purposes of State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 6, 2010

Date Mailed: January 8, 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 receipt 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.

JAB/db

cc:

