

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: 2009-4396
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 7, 2009
Washtenaw 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 April 7, 2009. Claimant personally appeared and testified. Claimant was represented by [REDACTED], [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 July 25, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 3, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 6, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 24, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 24, 2008, the State Hearing Review Team (SHRT) again denied claimant's application stating that she retains the residual functional capacity to perform a wide range of sedentary work.

(6) Claimant presented additional medical information following the hearing that was forwarded to SHRT for additional review. On August 10, 2009, SHRT once again determined that the claimant retains the residual functional capacity to perform past sedentary work.

(7) Claimant is a 42 year-old woman who is 5'7" tall and weighs between 165 and 175 pounds. Claimant completed 12th grade and 2 years of college in graphic art animation and design. Claimant also has administrative assistant training including Microsoft Office, MAC office and photo shop.

(7) Claimant testified that she last worked in May, 2008 at home as a customer service representative, job that lasted her 2 years and that ended because she was too sick to have the "tone of voice" her employer required.

(8) Claimant has also worked for [REDACTED] and [REDACTED] as an administrative assistant from 1998 to 2005 on temporary jobs in different assignments, for Detroit School Board as a secretary performing various school duties from 1996 to 1998 when she left for a better job, and for [REDACTED] as an administrative assistant from 1990 to 1993.

(9) Claimant has applied for SSI and been denied, and the denial was upheld in an SSA administrative hearing. Claimant's appeal is at the SSA Appeal Council level currently.

(10) Claimant lives alone in a townhouse that is HUD subsidized and pays no rent, and is helped by church donations.

(11) Claimant alleges as disabling impairments: asthma, knee pain, low blood pressure, low blood sugar, sinus and allergies.

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 May, 2008. 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes a Medical Examination Report of [REDACTED] from a physician with pulmonary specialty. Claimant's diagnosis is that of asthma and lateral patella subluxation. It is noted that the claimant has nasal discharge and knee tenders, but all of her other examination areas are normal. Claimant's condition is stable, and she can lift/carry up to 10 lbs. frequently and 10 lbs. occasionally. Claimant can stand and/or walk less than 2 hours in an 8-hour work day. A knee brace and cane are needed for ambulation and claimant cannot use either foot/leg to operate foot/leg controls. Claimant can however use both of her hands/arms for repetitive actions. Claimant has no mental limitations.

Medical Examination Report for [REDACTED], exam by a physician with physical medicine and rehabilitation specialty indicates that the claimant needs cane to walk and also knee brace, and that she has knee joint tenderness and patellar crepitation. Claimant is limited in lifting/carrying 10 lbs. occasionally, standing and/or walking less than 2 hours in an 8-hour work day and sitting about 6 hours in an 8-hour work day.

Additional medical evidence submitted following the hearing includes a follow up rehabilitation care report of [REDACTED], that states that the claimant has a history of bilateral knee pain secondary to lateral patellar subluxation post a surgery to repair tissue in the knee. Claimant reported being cleared by orthopedic surgery to bend the left knee as much as she would like with the brace on, and she is doing some ambulating with her crutches when in the community. Claimant is using a walker when in the home and wears a brace 24 hours a day including at night when she sleeps. Claimant is weight bearing as tolerated on the left lower leg.

Claimant left lower leg strength was 4/5 for knee extension, although she could not take much resistance, and when asked to hold the knee in extension, she starts to struggle with this after about 8 to 10 seconds. Ankle dorsiflexion, plantar flexion, and knee flexion on the left are 5 out of 5, and no warmth or swelling of the left knee was appreciated. Claimant is modified independent with sit to stand transfers and does seem to have weightbearing approximately equal on both legs.

[REDACTED], orthopedic report by a PA following an exam by the orthopedic doctor indicates that the claimant is 6 months status post left open medial retinacular plaction and repair. Claimant states that she is progressing well, she no longer has numbness in the leg, her quad is firing better, and she is feeling somewhat more independent but is still using crutches and a brace. Physical exam of the left knee reveals that the skin is intact, the incision is well healed, no gross swelling of the knee, she still does not have great quad contracture but is otherwise ligamentously stable. Claimant's circulation and sensation is intact. Claimant was to work on weaning herself from the crutches over the next several weeks and to also slowly wean herself out of the brace, and was to follow up in 3 months.

A [REDACTED], exam report by a PA indicates that the claimant had a flare up of allergic rhinitis and mild flare in asthma after exposure to known allergen, namely tress and dogs. Claimant's lungs were clear with fairly good air exchange, and no crackles, rhonchi, or wheezes were noted. Claimant was given a Z-Pak and told to use Flovent inhaler as prescribed.

A [REDACTED], follow up rehabilitation report quotes the claimant as saying that her left knee pain is about 3 out of 10. Claimant is now using a single-point cane for ambulation and has been doing this for about a month, is out of the brace when she is at physical therapy, and is not using a cane there either. Claimant continues to get Meals on Wheels for lunch. She has not had

any falls, but continues to find it difficult to go up or down hills or steps, but it is not pain that she is having. Claimant continues to have pain and discomfort in her right knee, but as she shifts her weight towards the left leg, she is having less of the symptoms at the right knee. Claimant is attending physical therapy 2 times per week and if she gets a [REDACTED] scholarship this week she will be able to participate in water aerobics. Claimant was independent with ambulation, but her cadence is slow and she steps very carefully without the brace or an assistive device. The calf atrophy on the left is very noticeable. Claimant was to continue with her home exercise program, will possibly have repair done to her right knee later on this year, and will return to the clinic in approximately 2 months.

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. This Administrative Law Judge finds that the medical record combined is sufficient to establish that claimant has a severely restrictive physical impairment. Claimant has therefore met her burden of proof at Step 2, and analysis continues.

At Step 3, 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, the Administrative Law Judge would have to deny her based upon her ability to perform past relevant work. Claimant's past relevant work was doing secretarial work, a

sedentary type of job. Claimant was working from home as a customer service representative up to May, 2008. Claimant testified that she lost this job because she was too sick to have the “tone of voice” that was required. Claimant’s record contains an e-mail from [REDACTED] dated [REDACTED], stating that there are concerns with her performance on their contract in that her customer service skills are not as expected and her “SO” scores reflect those issues. [REDACTED] gave the claimant two options in order to maintain her employment on the contract with them, either to be given one more chance to improve with her tone being upbeat, friendly and helpful, or she will be terminated, or that she take a leave of absence to get back on track. Claimant’s response was that she is terminating her position effective [REDACTED], and that the company tells her “conveniently” that her scores fall far below standards whenever she either ask a question nobody can answer or had not considered, such as pointing out the difference between what is actually her job vs. theirs or request a day off. It is clear from this correspondence that the claimant did not lose her job due to physical inability to perform it, but because she quit due to having some apparent ideological differences with her employer. The job claimant was performing could have been completed even while she had to use assistive devices to move around following her outpatient knee surgery. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability 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 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 lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to perform sedentary work if demanded of her. 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 sedentary work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 42), who is even illiterate or unable to communicate in English and with an unskilled work history or no work history at all who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23. Claimant has two years of college and significant work experience in sedentary type jobs.

In conclusion, although the claimant has cited medical problems, 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 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: September 22, 2009

Date Mailed: September 23, 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.

IR [REDACTED]

cc:

[REDACTED]