

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: 2009-476
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 2009
Oakland 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 March 3, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [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 June 13, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 8, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.27.

(3) On August 20, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On August 29, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 9, 2008, the State Hearing Review Team again denied claimant's application stating that claimant had a non-severe impairment/condition per 20 CFR 416.920(c) and that drug and alcohol abuse was material per 20 CFR 416.935.

(6) The hearing was held on March 3, 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.

(8) On March 12, 2009, the State Hearing Review Team again denied claimant's application stating that she had a non-severe impairment/condition per 20 CFR 416.920(c) and that drug and alcohol abuse was material per 20 CFR 416.935. The State Hearing Review Team commented that the claimant has a history of cocaine and alcohol abuse. While the claimant reported being free of alcohol for two years, the diagnosis included acute alcohol intoxication. The claimant was noted to be 5' 8" tall at her physical exam in [REDACTED] which was unremarkable except for crepitus in the knees. In [REDACTED] she was 121.2 pounds which does not meet or equal the old or new weight loss listing. She also had rectal prolapse in [REDACTED] which required surgery. However, with surgery the claimant's condition was expected to improve.

(9) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 108 pounds. Claimant recently gained 10 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2004 in a restaurant as a waitress and manager. Claimant is also a licensed cosmetologist and she had a paper route and sold shoes.

(11) Claimant alleges as disabling impairments: obsessive compulsive disorder, anorexia, anal prolapse, Barrett's esophagitis, anxiety, bipolar disorder, gastroesophageal reflux disease, and osteoporosis as well as a lack of concentration.

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 2004. Claimant is not precluded from receiving disability at Step 1.

The objective medical evidence on the record indicates that as of [REDACTED] the claimant has a complete rectal prolapse which requires surgery and admission to the hospital for at least 3 days. The medical doctor indicates that the claimant is young and not to do this surgery would subject her to immediate complications which include strangulation and gangrene of the rectal stump. The long term complications include incontinence which would have a devastating effect on her life. (Exhibit 1, Claimant) Another letter in the file indicates that claimant suffers from a rectal prolapse which requires surgical intervention. Claimant also has Barrett's esophagitis with daily nausea and emesis. The DHS-49 in the file indicates that claimant was normal in all examination areas except she had back pain, a bipolar disorder and a personality disorder. (Page 15) Claimant's condition was deteriorating and she could stand or walk less than two hours in an eight hour day and never lift any weight and could do simple grasping, reaching, pushing and pulling with both of her upper extremities but not operate foot or leg controls with either of her lower extremities. (Page 16)

At Step 2, this Administrative Law Judge finds that claimant has established that she does have a severe physical impairment in the form of the anal prolapse. The treating physician stated that she was in need of immediate surgery which would indicate that her condition is severe. Claimant testified that her condition has lasted for approximately five years which would meet duration.

Claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

This Administrative Law Judge finds that claimant can probably not perform her prior work as a waitress or as a shoe sales person with the anal prolapse. Therefore, this Administrative Law Judge finds that she is not disqualified 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 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).

In the instant case, this Administrative Law Judge finds that claimant can probably not perform sedentary or light work at this time based upon the fact that she does have an anal prolapse. Claimant's activities of daily living do appear to be very limited and she is in need of immediate surgery. Therefore, this Administrative Law Judge finds that based upon claimant's physical condition with the anal prolapse that she is disabled for purposes of Medical Assistance benefits at this time.

The department is required to initiate a determination of claimant's financial eligibility for the requested benefit, if not previously done.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance program and the State Disability Assistance program as of the June 13, 2008 application date.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the June 13, 2008 application, if it has not already done so, to determine if all other non-medical eligibility criteria are met for purposes of the Medical Assistance benefits and

State Disability Assistance benefits. The department shall inform the claimant of the determination in writing.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 7, 2009

Date Mailed: April 7, 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

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