

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: 2009-5025

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 12, 2009

Wayne 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 three-way telephone hearing was held on March 12, 2009. Claimant personally appeared and testified from her home.

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 August 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 23, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 24, 2008, the department caseworker sent claimant notice that her application was denied.

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

(5) On December 9, 2008, the State Hearing Review Team again denied claimant's application stating that she was capable of performing other work, namely light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a).

(6) Claimant is a 46 year-old woman whose birth date is [REDACTED] Claimant is 5' 5" tall and weighs 180 pounds, and alleges she lost 70 pounds since middle of 2008 due to having no appetite and feeling sick all the time. Claimant has a GED and is able to read, write and do basic math.

(7) Claimant is not currently employed and last worked in 2007 as a self-employed hair stylist, job she has done all her adult life but states she had to quit due to her physical and mental condition. Claimant also attended cosmetology school in 2007 but had to quit in December, 2007, allegedly again due to her medical condition.

(8) Claimant alleges as disabling impairments: chronic arthritis, chronic asthma, high blood pressure, mental depression, carpal tunnel, high cholesterol, liver disease and pituitary gland problems.

(9) Claimant has applied for Social Security disability and been denied in November, 2008. Claimant is appealing this denial.

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 year 2007 due to her medical problems. Psychiatric Evaluation completed on [REDACTED] has a notation that the claimant has past prison time for non-violent offense and that she is currently on parole (Department's Exhibit I, page 28). Michigan Department of Corrections Offender Tracking Information System (OTIS) shows that the claimant was incarcerated in [REDACTED] and paroled on [REDACTED]. While it is possible that the claimant could not work because of health problems, it is also possible that the claimant was not truthful in her testimony and that the reason why she had to stop working was the simple fact that she was in prison. Assuming that the claimant is being truthful about not currently working, 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.

Medical evidence of record includes a Medical Examination Report, DHS-49, completed on [REDACTED] (Department's Exhibit I, pages 11 and 12). Physician did not indicate when the first or the last date he examined the claimant. As the claimant was in prison from [REDACTED] to [REDACTED] logical conclusion would be that this physician has not seen the claimant during this

period of time. The report states that the claimant is 5'5" tall and weighs 238 pounds, that her blood pressure is 94/67, and that her visual acuity is 20/20. Examination areas marked as abnormal are respiratory-asthma, abdominal-liver disease, and musculo-skeletal-degenerative joint disease. Claimant's condition is marked as stable, but her limitations are not lifting/carrying more than 10 lbs. ever, that she walks with a cane, that she cannot use neither of her hands for pushing/pulling and fine manipulating, and that she cannot operate foot/leg controls with either foot. Claimant is marked as having no mental limitations, and that she can meet her needs in the home. There is no indication of what the medical findings are that support the physical limitations marked on the report. There is also no mention of any type of tests that support the finding of asthma, liver disease or degenerative joint disease, and one could almost reach an opinion that the report was prepared solely based on claimant's reporting of her ailments and limitations.

Claimant's medical record also contains a Psychiatric Evaluation completed on [REDACTED] (Department's Exhibit II, pages 27 and 28). This evaluation states that the claimant is currently asymptomatic, however past complaints have included hypersomnolence, insomnia, anxiety, paranoia, hearing voices, irritability, agitation, rapid mood swings, racing thoughts, loss of libido and poor concentration. Claimant reported no anxiety complaints, no mood complaints, no sleep problems, no manic symptoms, no attention deficit symptoms, no pain complaints, no sexual dysfunction, no thought disorder-related complaints and no PTSD symptoms. No complaints of medication side effects are reported, medications have been beneficial, and claimant has remained clean and sober. It is noted that the claimant's substance abuse history includes the use of crack cocaine and heroine, that the usage reached the level of dependence, and it has been greater than a year since the last use. Multiple substance rehab

efforts have been undertaken over the years. Claimant has also had multiple past suicide attempts according to the evaluation.

Mental Status exam describes the claimant with good grooming, timeliness, orientation times four, euthymic mood, calm behavior with social smile, no psychosis evident, logical and coherent thought process, intact judgment, normal speech, good eye contact, no delusional thought, no obsessive or compulsive thoughts, good insight and below average intelligence. Claimant was determined to have no current suicidal thoughts, intent or plan, and no homicidal thoughts, plans or intent. Claimant was assessed with Bipolar I Disorder, hypertension, hypercholesterolemia, arthritis and carpal tunnel.

It is noted that the Psychiatric Evaluation does not give any indication as to how long the claimant has been seen by the psychiatrist completing it, how it was determined that the claimant indeed has a history of past suicide attempts, and what type of documentation was used to determine that the claimant had past symptoms of some type of mental illness. While it is possible that such information and documented psychiatric history was in possession of the psychiatrist completing the evaluation, possibility again exists that the evaluation was completed based on claimant's description of her mental issues.

Claimant participated in this hearing from her home as she stated she was not feeling well enough to attend the hearing in person. Claimant appeared to have difficulty breathing. Claimant testified that she has smoked crack cocaine for the last 20 years and relapsed 2 months ago. When specifically asked if she thought smoking crack cocaine was affecting her ability to breathe, claimant readily stated that it does. Claimant further testified that she is able to do very little in the way of household chores, that she listens to music and watches TV most of the time, and that she is in constant pain for which she takes Vicoden given to her by a friend. Claimant also testified that she was hospitalized for irregular heart beat in [REDACTED] and that she was

told she had liver disease in 2008, however no medical records have been provided to verify this testimony.

The only medical information pertaining to possible medical and mental issues claimant provided has been described above. As this information is not supported by any medical tests or psychiatric records of history of mental problems, it is unknown if the medical and psychiatric conclusions are based on claimant's own reporting of her symptoms. Physical limitations listed on DHS-49 are not supported by any cited medical findings. Psychiatric evaluation describes the claimant as not having any psychiatric issues at the time of the evaluation, [REDACTED] In addition, one of the conditions of claimant's parole according to OTIS is that she must make earnest efforts to find and maintain employment, so it is apparent that claimant's parole officer is either not aware of her claimed medical issues, or those have been reviewed and found not to be sufficient to exempt her from looking for employment. The only conclusion that can therefore be reached is that there is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or 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.

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work according to her hearing testimony is that of a hairdresser, work she has been doing all of her adult life. As already stated, the reason for the claimant quitting

this work is either her testimony that her medical problems prevented her from continuing it in 2007, or the fact she was incarcerated in this year. Social Summary completed by the claimant on October 14, 2008 with the assistance of a department's caseworker notes that the claimant stated she has worked for temporary service for 5 years for different companies but that she can't remember when (Department's Exhibit I, page 10). Therefore, it is unknown what the claimant exactly did in the past and what she is able or unable to do, but her claim that she cannot be a hairdresser any longer is questionable. 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 do at least sedentary work if demanded of her. Sedentary work capability is arrived at by giving claimant's medical information that lists limitations not supported by any cited medical findings great weight that it does not deserve. In addition, claimant's hearing testimony about multitude of physical and mental issues she suffers from is also questionable due to the fact that she was less than truthful about some of her circumstances, such as not revealing she was incarcerated for a year. Claimant being in prison is not any basis that would lead this Administrative Law Judge to conclude she is not disabled, or that she does not have any legitimate medical problems. Individuals with medical problems are usually treated for such

problems while in prison, and medical records of such treatment are certainly acceptable for MA disability determinations. However, the fact that the claimant stated she had to quit her job in 2007 because of her medical problems when she was indeed unable to perform any type of a job due to her incarceration does place her testimony in doubt. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record and claimant's testimony which cannot be found to be totally credible 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 at least sedentary work. Under the Medical-Vocational guidelines, a younger individual (age 46), with even limited education and an unskilled work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

As the claimant does not meet the disability criteria, the determination of whether her continued drug abuse (as she testified she had a cocaine use relapse 2 months ago) is material to her disability is not relevant at this time. However, claimant is advised that even if she was to meet the disability criteria in the future, the Federal Regulations at 20 CFR 404.1535 require that 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. This determination could still make the claimant ineligible for disability unless she no longer uses drugs or has physical or mental limitations that would remain without drug use.

In conclusion, the claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do

basic work activities. 20 CFR 416.920(c). 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 at least 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: April 14, 2009

Date Mailed: April 17, 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.

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