

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: 2009-5069

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 5, 2009

Lapeer 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 5, 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 July 28, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 18, 2008, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On October 13, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 22, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 3, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing her past work as a cashier.

(6) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant was 5' 11-3/4" tall and weighs 172 pounds. Claimant recently lost 37 pounds. Claimant attended two years of college and went to correction's officer school and real estate school. Claimant is able to read and write and does have basic math skills.

(7) Claimant worked approximately 8 to 10 years before the hearing at [REDACTED] as a cashier. Claimant has also worked in real estate, at [REDACTED], and at the [REDACTED] as a cashier.

(8) Claimant alleges as disabling impairments: pancreatitis, numb feet, neuropathy, arthritis and depression.

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 approximately 8 to 10 years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that [REDACTED] medical records state that claimant was in [REDACTED] for chronic alcoholism in [REDACTED]. She was on the medical floor in [REDACTED] with vaginal bleeding and severe anemia. She was scheduled to have a hysterectomy and she had pancreatitis and hypothyroidism. Claimant was admitted from the emergency room. She had been drinking heavily for the past six days and her blood level was 2.74, potassium 3.1, amylase was 124, lipase was 128 and blood pressure was 163/112. Her general examination indicated that she was a well developed, well nourished white female who was anxious and tremolos. Her blood pressure was then taken again at 157/97, pulse 69, respirations 22, temperature, 98.3, height 5' 11", weight 173 pounds. Her oxygen saturation was 96 percent on room air. Her head was normocephalic. Her pupils were equal and reacting to light. Extraocular movements were normal. Eyes were clear. Throat was clear. Tongue was dry. Her neck was supple. There was no jugular venous distention. No lymphadenopathy. Her chest

was symmetrical and her expansion was fair. She had no thyromegaly and her trachea was central. Her lungs were clear on auscultation. She had regular sinus rhythm with no murmurs heard in her heart and her breaths were negative to palpitation. Her abdomen was soft. There was tenderness in the upper abdomen on palpitation. No masses were palpable. Bowel sounds were normal. She had no peripheral edema. Peripheral pulses were bilaterally equal and normal. Deep tendon reflexes were bilaterally equal and normal. Babinski negative bilaterally. Claimant was alert and oriented to time, place and person. She was apprehensive and anxious. Her cranial nerves were intact. There were gross motor or sensory deficits present except gross tremors and shakes. (Pages 67 and 68) On [REDACTED], claimant came to the emergency room. The medical reports indicate that claimant was cleared for surgery under general anesthesia for vaginal bleeding and was told to avoid any alcoholic products. Claimant was also diagnosed with chronic obstructive pulmonary disease and she was a tobacco user. (Pages 47 and 48) A DHS-49 in the file dated [REDACTED] indicates that claimant can occasionally lift up to 10 pounds but never lift 10 pounds or more. Claimant can stand or walk at least two hours in an eight hour day. Claimant's clinical impression was that she was stable and she was able to do simple grasping with both of her hands but not pushing or pulling or fine manipulating and could not operate foot and leg controls with either feet or legs. Her examination areas were normal except for muscle spasms between the shoulder blades and anxiety and her right rib cage was tender. Her blood pressure was 126/82 and she weighed 182 pounds.

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 are expected to last for the durational requirement of at least 12 months. There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports

of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The DHS-49 indicates that examination areas are normal with the exception of tenderness in the rib cage and muscle spasms between the shoulder blades and some anxiety and tenderness over the abdomen. There are no laboratory or x-ray findings listed on the DHS-49. The statement made by claimant's physician that claimant experiences tenderness in her musculature is the only support given for the extreme physical limitations listed on the second page, which indicates that claimant can only lift less than 10 pounds and not use her upper extremities for repetitive actions except for simple grasping. The form indicates that assistive devices are not medically required or needed for ambulation; however, no opinion was rendered regarding how long claimant can sit even though she is listed as able to stand or walk at least two hours in an eight hour day. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based on the claimant's 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. 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 Step 2 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. Claimant's past relevant work was at least light and some sedentary (cashier or real estate). There is insufficient objective medical evidence upon which this Administrative Law Judge can base a finding that claimant is unable to perform work 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).

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 activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. Claimant did testify on the record that she does smoke a pack of cigarettes per week and her doctor has told to quit and she is going to be using the patch. Claimant also testified that she quit drinking in [REDACTED]. 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 by 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor

material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

Claimant testified on the record that she does have depression.

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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. In addition, based upon claimant's medical reports, it is documented that she had heavy use of alcohol as well as pancreatitis which would have contributed to her physical and any alleged mental problems.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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 light or sedentary work even with her impairments.

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, 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 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: 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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