

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: 2009-5267
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 2009
Ingham 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 18, 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 May 27, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On September 3, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

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

(4) On October 25, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 5, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.28. The State Hearing Review Team commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of past work a denial to other work based on a Vocational Rule will be used.

(6) The hearing was held on March 18, 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 on March 23, 2009.

(8) On April 10, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.28.

(9) Claimant is a 19-year-old woman whose birth date is [REDACTED]. Claimant was 5' tall and weighs 190 pounds. Claimant recently gained 50 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked January 2008 as a [REDACTED] stocker.

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 January 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that medical reports from [REDACTED] indicate that claimant weighed 200 pounds and was 60" tall. He had a body surface area of 1.87 and a body mass index of 39.06 kg/m². Her pain level was 9 out of 10 and her pulse was 78. Her blood pressure was 128/78. Her skin was normal. Her HEENT and her eyes were normal. Her thyroid gland was normal size and consistency. Her chest and lungs were clear to auscultations and her breath sounds were normal. Cardiovascular, she had normal heart sounds.

Neurologic, motor skills were normal. Lymphatic system was normal. It was determined that she had asthma without exacerbation and acute atopic conjunctivitis and a rash and allergic rhinitis. (Pages 2 and 3) A rheumatology report dated [REDACTED] indicated that the claimant appeared comfortable. She weighed 210 pounds and her pulse was 80. Her blood pressure was 122/80 and her respiratory rate was 12. Her head was atraumatic and her pupils were normal size. Trachea was midline. Thyroid was not palpable. There were no lymph nodes. Her chest was clear to auscultation and percussion. Palpation was normal. No vocal fremitus and no rubs. Her cardiovascular system, JVP was not elevated. The cardiac apex was in the fourth interspace medial to the midclavicular line. S1, S2 was normal. There was no S3. There was no S4, no rubs or murmurs. The abdomen was soft with no tenderness. Bowel sounds were normal. There was no organomegaly. The skin had no lesions. Neurologically, the claimant was awake, alert and oriented. Cranial nerves 2 through 12 were intact. No motor or sensory deficit. Both upper and lower extremity examination was done for inspection, palpation, stability, and range of motion. Only the pertinent abnormal and normal findings are listed below. Claimant has tenderness at the MCP and PIP joints. She had mild tenderness at the ankles and feet. Mild tenderness at the paraspinal muscle groups of the lower back. Her assessment and plan was that she was 19-year-old with seronegative. She had symptoms of arthralgias, possibly early inflammatory arthritis and her CCP was negative. (Pages 19 and 20) A comprehensive psychological examination of [REDACTED] indicates that claimant reported that she was in great pain but did not appear to be in pain when walked or sat in a chair. She reported being right handed. She denied having problems with vision but reported problems with hearing. Her speech was understandable on the day of her assessment. She was cooperative, verbal, friendly and engaged in the assessment process. Her grooming and hygiene were good. She appeared to have good contact with reality.

Her level of motor activity was normal. She was pleasant. She reported being autonomous. She did not appear to be exaggerating or minimizing her symptoms. She was logical and organized in response to questions. She denied having hallucinations or delusion. She denied being persecuted. She denied others controlled her thoughts or that she had any unusual powers. She did report feeling worthless and hopeless but not guilty. She reported some somatic difficulties including pain, problems with sleep and difficulties with fatigue, appetite and weakness. She did not appear hyperactive, depressed, angry or anxious. She was friendly. She was oriented to time, person and place. She remembered six digits forward and four digits backward. She remembered two or three objects after a three minute delay. When asked to name the recent presidents of the United States in correct order she gave Bush, Clinton, and Bush. When was asked to name the past governors of Michigan, she named Granholm and Engler. She correctly gave her birthday as May 7, 1989 and stated that she was 19. When asked to name five large cities in the United States she gave L.A., New York, Washington, Baltimore, Chicago and Detroit. When asked to name well-known living Americans she did so easily. In serial sevens she did 100, 93, 86, 79, 72 and 65. She stated that $3+4=7$, $9+6=15$, $4 \times 5=20$, $9/3=3$, and $8 \times 7=I \text{ don't know}$. When asked when don't cry over spilled milk meant she indicated don't cry over little things. When asked how a bush and a tree are alike, they are both plants. How are a bush and tree different, the trees stand up. How are an orange and a banana alike, they are both fruits. How are an orange and a banana different, the color. In her judgment she was asked what she would do if she were the first to see a fire in a movie and she responded scream out fire. When asked what she would do if she saw a stamped addressed sealed envelope on the sidewalk, she responded give it to the mail person or take it to the post office. Claimant had a depressive disorder and oppositional defiant disorder by history and her current GAF was 54 and her best GAF for the past year was 54 and

her prognosis was guarded which would improve with appropriate psychiatric and psychological counseling so she would be able to manage her own funds. (Pages 6-8)

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 duration of at least 12 months. There is insufficient objective clinical medical/psychiatric evidence in the record that claimant suffers a severely restrictive physical or mental impairment. There are no laboratory or x-ray findings listed. Claimant does experience some tenderness in her musculature, and may have some early arthritis, but claimant's allegation that she has rheumatoid arthritis is not supported by the objective medical evidence. 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, claimant has restricted herself from tasks associated with occupational functioning based upon her 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 claimant has a severely restrictive physical impairment.

There is insufficient objective psychiatric evidence 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 provide objective evidence 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.

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 last worked at [REDACTED] as a greeter. As a greeter, the job would not require strenuous physical exertion and there is no physical medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in 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).

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).

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 could also do medium tasks if demanded of her. Claimant testified that she does cook every few days and warms up leftovers mostly. Claimant testified that she does grocery shop one time per month and needs help finding stuff and with a ride. Claimant testified that she doesn't clean because her grandmother does it for her. Claimant testified that her hobbies are playing video games and she plays everyday for a few hours on an X-Box 360, writing music and reading. Claimant testified that she can walk a few minutes, stand for 3 to 4 minutes and sit for 10 minutes at a time. Claimant testified that she showers and dresses herself, but can't squat because it hurts her knee

and she can't bend at the waist but she can tie her shoes but not touch her toes. Claimant testified that the heaviest weight she can carry is 5 five and that she is right handed and that she has arthritis in her hands. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 7. Claimant testified that in a typical day she gets up and watches television, makes her bed, eats breakfast, plays video games, watches basketball, reads and goes to bed.

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. 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. Under the Medical-Vocational a younger individual (age 19), with a less than high

school education and an unskilled work history who is limited to light work is not considered disabled.

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 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: May 19, 2009

Date Mailed: May 20, 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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