

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: 2009-5501
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 2009
Kent 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 24, 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 3, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 10, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.21.

(3) On October 14, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 31, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 10, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant reports a diagnosis of lupus and seizures. However, there are no actual medical records in the file that document either diagnosis. There is no evidence that the claimant has had a medical workup for the seizures. On exam, she had some skin lesions and some tenderness, but her grip, dexterity and gait were normal. However, at the mental exam, the claimant used a cane and leaned on the wall. She was depressed but there was no evidence of a significant thought disorder. To give the claimant the benefit of any doubt she will be limited to simple, unskilled, medium work avoiding unprotected heights and dangerous moving machinery. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform simple, unskilled, medium work avoiding unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 16 years of education and a history of skilled work, MA-P is denied using Vocational Rule 203.29 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on March 24, 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 May 27, 2009.

(8) On June 4, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant reports a diagnosis of lupus and seizures. However, in [REDACTED], lupus was ruled out. A seizure disorder has not been ruled out but the claimant reported no seizures since starting the seizure medications. The claimant's examination was basically unremarkable in [REDACTED]. She does have a diagnosis of fibromyalgia, degenerative arthritis of the lumbar spine and osteoarthritis of the hips, but her grip, dexterity and gait were normal. At the mental exam, the claimant was depressed but there was no evidence of a significant thought disorder. The claimant the benefit is capable of simple, unskilled, medium work avoiding unprotected heights and dangerous moving machinery. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform simple, unskilled, medium work avoiding unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 16 years of education and a history of skilled work, MA-P is denied using Vocational Rule 203.29 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(9) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5' 2" tall and weighs 145 pounds. Claimant attended four years of college and studied business.

(10) Claimant was employed on the date of hearing doing home healthcare approximately eight hours per week and earning about [REDACTED] per month. Claimant has worked as a deputy court clerk and as the head of marketing and mostly administrative jobs.

(11) Claimant alleges as disabling impairments: lupus, fibromyalgia, depression, arthritis and a seizure disorder.

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 working or was working on the date of hearing as a home healthcare aid and she was cooking meals, doing laundry and grocery shopping for the person that she worked for. Claimant was earning approximately [REDACTED] per month in earned income. This

may not be considered substantial gainful activity and, therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a mental status examination dated [REDACTED] showed the claimant used a cane and used her other hand to occasionally lean against the wall. Hygiene was intact. Intelligence appeared to be low-average. There was no psychotic intrusion observed. Stream of mental activity was slow but organized. She was depressed. Speech was normal. Diagnosis was major depressive disorder, recurrent, severe without psychotic features. (New Information from DDS)

A consultative examination dated [REDACTED] showed the claimant had complaints of diffuse arthralgias. She also reported a diagnosis of seizures which began in 2007. Her last seizure was about a week prior to the exam. (Page 33) The claimant was 61-1/2" tall and 156 pounds. There were discoid lesions on the left deltoid and over the left calf. There was tenderness of the scalene muscles, the rhomboids, as well as the trapezius and paravertebral muscles of the lumbar spine. Grip strength was intact and dexterity was unimpaired. There was a paravertebral muscle spasm. (Page 32) Range of motion, ROM, was basically within normal limits for the joints tested and spine. (Pages 30-31) Motor and strength and tone were normal. Sensory was intact. Reflexes were 2+ and symmetrical. She walked with a normal gait without the use of an assistive device. (Page 31)

In [REDACTED], the claimant reported she had been diagnosed with SLE in the past. She also reported that she was sure she had a seizure the end of May and stated she "fell out". She reported that she had loss of voluntary motor activity, though she denied loss of consciousness, stating that she "bounced around" having a seizure. The doctor discussed with the claimant that it was not clear that she had lupus. She was referred to the epilepsy clinic because she was adamant

that had a seizure, but the doctor indicated if so it was atypical. On exam, there was some mild ankle swelling bilaterally but no other joint swelling noted. Gait was normal. Motor was symmetric. She did have scattered hyper-pigmented patches on the trunk and extremities. (New Information from DDS)

The claimant had a normal EEG in [REDACTED]. (New Information, Page 39) A brain MRI in [REDACTED] was normal. The claimant was admitted in [REDACTED] for epilepsy monitoring and she did not have any clinical seizures during that admission. In [REDACTED] she reported that she did not have any seizures since she started Valproic. The doctor stated that epilepsy could not be ruled out at that time. (New Information, Page 40)

A rheumatology consult dated [REDACTED] indicated that the claimant did not meet the ARC criteria for systemic lupus. The impression was chronic, recurring idiopathic panniculitis, low positive ANA, a working diagnosis of a seizure disorder and fibromyalgia. (New Information, Page 42)

On examination in [REDACTED] the right hip was tender to palpation and had pain in the right knee with external rotation of the right hip. The examination was otherwise unremarkable. (New Information, Pages 86-87)

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 the duration of at least 12 months. There is insufficient 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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. 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. In addition, claimant was working as a home healthcare aid during the time of the hearing and, therefore, was able to do meals for another person, do laundry and grocery shop for another person.

There is insufficient objective medical/psychiatric evidence in the file 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 was able to answer all the questions at the hearing and was responsive to the questions. 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 was, on the date of hearing, working as a home healthcare aid which means that she can perform her prior work. In addition, most of claimant's prior work was sedentary or light in

the form of administrative jobs and there is no 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).

Claimant testified on the record that she does do home healthcare and that she has a driver's license but doesn't drive and she usually either gets a ride from her family or catches the city bus and usually has a 30-minute bus ride. Claimant does 4-6 times per week and cooks things like spaghetti. Claimant does grocery shop two times per month. Claimant does laundry and dishes. Claimant testified she is able to walk two blocks at a time, stand for 30 minutes at a time, and sit for 30-40 minutes at a time. Claimant testified that she can shower and dress herself, tie her shoes with her leg up and touch her toes. Claimant testified the heaviest weight she can carry is five pounds or a gallon of milk and that she is right-handed and that her hands and arms are fine except that she does have some pain in her joints in her elbows and wrists.

Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is an 8/9. Claimant testified that she continues to smoke a half a pack of cigarettes even though her doctor has told her to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant is not in compliance with her treatment program because she does continue to smoke despite her doctor's suggestions to the contrary.

Claimant testified that in a typical day she gets up and brushes her teeth and washes her face and tries to get alert and drinks coffee. The she puts her clothes on and goes to make meals for her elderly employer. The claimant's testimony as to her limitations indicates she should be able to perform light or sedentary work. 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.

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'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 guidelines, a younger individual (age 47), with a more 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: July 20, 2009

Date Mailed: July 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

cc:

