

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: 2009-7514
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 26, 2009
St. Joseph 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 telephone hearing was held on March 26, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was a Case Manager from [REDACTED], a homeless shelter.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On June 19, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 31, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 6, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On November 13, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 13, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating she retains the capacity to perform a wide range of unskilled light work, using Vocational Rule 202.20 as a guide.

(6) Claimant presented additional medical information following the hearing which was forwarded to SHRT for review. On July 1, 2009, SHRT once again determined that the claimant retains the capacity to perform at least unskilled, light work, and again used Vocational Rule 202.20 as a guide.

(7) Claimant is a 46 year-old woman who is 5'4" tall and weighs 230 pounds. Claimant has an associate degree in computer science, and can read, write and do basic math.

(8) Claimant states that she last worked in October, 2007 for [REDACTED] as a bus driver, job that started in August, 2003 and ended due to health reasons when she hurt her back from lifting a child. Claimant states she received UCB in 2008 for 2 months until she applied for disability and did not want to continue receiving such benefits as she would have to be able to work.

(9) Claimant also worked for [REDACTED] part time from 2003 to February, 2007 as a cashier, job that ended because she hurt her hand at work, at an auto plant from July, 2000 to September, 2007 when she was laid off, in factory line work from 1995 to 2000, and in clerical work filing, answering telephones and routing mail for 10 years from 1985 to 1995.

(10) Claimant currently lives in a homeless shelter, has a driver's license and drives twice per week to doctor's appointment and to get groceries, 6-7 miles one way, and watches TV, plays cards and reads books as hobbies.

(11) Claimant has applied for SSI in December, 2007 and been denied, and is appealing the denial.

(12) Claimant alleges as disabling impairments: diabetes, sleep apnea, high blood pressure, hiatal hernia, torn left rotator cuff, back pain, anger management issues and depression.

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 2007. 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.

The objective medical evidence on the record includes a sleep study of [REDACTED] with findings of mild sleep apnea. It is noted that weight loss may be considered as an initial treatment for the apnea.

On [REDACTED] claimant had a chest x-ray due to lower extremity edema. Findings were that claimant's heart size is normal and the lungs are clear of infiltrate.

An x-ray of claimant's right foot of March, 2008 due to complaints of right heel pain. No evidence of fracture was found and the impression was those of calcaneal spurring.

Consultive examination report of [REDACTED], states that the claimant was having a migraine and arrived for the examination late due to the headache. Claimant reported having burning in her feet and swelling in her legs for which she takes Lasix. She has not lost weight even though she complains of vomiting with the hiatal hernia, and was told that she could have the hernia repaired when she needed a gastric bypass. Claimant had pain in the lower back and left shoulder, spurs on the cervical spine seen on the MRI, and left 4th and 5th fingers are numb. Claimant arrived in a hospital wheelchair but she was able to walk unsupported to the examination room from the reception area which is 25 feet. Claimant had no muscle spasm and no atrophy, fine and gross coordination was intact, there was no ataxia, deep tendon reflexes were normal, range of motion was normal except for the left shoulder, she could heel/toe walk, and her squatting was limited to 50%. Claimant had pain in her left shoulder and resisted moving the left arm due to this pain. Claimant had diminished sensation in her mid calf bilaterally.

Medical Examination Report for [REDACTED], exam indicates as claimant's diagnosis incisional hernia and insulin dependent diabetic. Claimant was 241 lbs. and her blood pressure was 128/90. All of claimant's examination areas were checked as normal except abdominal due to the hernia. Claimant's condition was marked as stable, she had limitations of lifting up to

20 lbs. occasionally, and standing, walking and sitting about 6 hours in an 8-hour workday.

Claimant could not use her hands/arms for pushing pulling repetitive action, but could operate foot/leg controls with both extremities. Claimant had no mental limitations.

Medical Examination Report for [REDACTED], exam indicates that the claimant has a large incisional hernia for which she underwent surgical repair on [REDACTED], and that she is not able to walk more than a block at the time due to hip pain. Claimant's condition is noted as improving; she can occasionally lift/carry up to 10 lbs., stand/walk less than 2 hours in an 8-hour work day, and sit less than 6 hours in an 8-hour workday. Claimant does not need any assistive devices for ambulation, she cannot reach, push or pull with her hands/arms, but she has no mental limitations. Claimant can meet her needs in her home without assistance.

Psychological Services of Southwestern Michigan examination report for date's claimant was seen being [REDACTED], and [REDACTED] states that the claimant did not cite mental health issues as part of her disability application, yet she does indicate mental concerns that have resulted from her health problems. Claimant was currently seeing a mental health therapist at local CMH for coping skills and treatment of depression, but no medication had been prescribed to her for this condition. Claimant was on variety of medications for her medical needs. Report cites the claimant as having an associate degree in computer science and studying business administration for additional year and a half in the early 1990's.

Mental Status Examination describes claimant's general appearance within normal limits, clean and appropriate in terms of age, gender, style, fit, etc., and her grooming as acceptable. Claimant's speech showed a free exchange of ideas was fluid and within normal limits. Claimant was cooperative, friendly and had no difficulty interacting. Claimant had no orientation deficits as to time, person, place, or reason for the evaluation. Claimant's memory appeared intact with no reported or observable concerns with immediate, recent, or remote

memory functions, yet she reports she frequently becomes confused regarding short term memory. No suicidal or homicidal ideation was noted, and no hallucinations, delusions and/or illusions were observed or reported. Claimant's diagnoses are that of depression and anxiety due to arthritis and hip pain, and she has a GAF of 50. It was remarked that the claimant presented in a fashion that suggested she was in less mental health distress than her continual pain from physical ailments.

New medical information presented by the claimant following the hearing shows that the claimant was seen by a podiatrist on [REDACTED], for complaints of pain in the outside of her left foot, an ingrown toenail on the great right toenail, and painful lesion on the back of her right great toe. Examination revealed that the claimant had several toenails that appeared blackened, thick and incurvated. Claimant's neurological exam was intact. Impression was that of heel spur plantar and posterior bilaterally and ingrown toenail.

Claimant was seen again by the podiatrist on [REDACTED], complaining that the right great toenail and right 2nd toenail are painful, ingrown, thick and discolored. Claimant wanted to proceed with a permanent procedure, as she has tried self treatment with no success, such as soaking and trimming. It is noted that the nail condition has lasted for years. Claimant then underwent ingrown nail surgery. Claimant was seen for a follow up on [REDACTED], and her condition was progressing as expected postoperatively.

[REDACTED], Office Visit note shows that the claimant was 5'3" tall and weighed 234 pounds. Claimant's general examination was normal except for obesity. Claimant's major problems were listed as diabetes type II uncontrolled, obesity, and insomnia. Claimant was encouraged to adjust caloric intake to maintain or achieve ideal body weight, to emphasize fruits, vegetables, whole grains, lean meats, etc.

Claimant had an MRI of the lumbar spine on [REDACTED] which shows degenerative changes, most pronounced at L4-L5, mild spondylolisthesis, mild to moderate canal stenosis, and mild foraminal stenosis. This MRI was addressed at [REDACTED], office visit and claimant was advised to watch her diet and the importance of regular exercise was stressed with recommended regular (4 times a week or more) walking or other light activity.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. For these reasons, this Administrative Law Judge finds that claimant has met her burden of proof at Step 2.

The analysis proceeds to Step 3, where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge finds that the claimant does not have the ability to perform some of her past relevant work. Claimant's past relevant work from 2003 to 2007 was driving a school bus with disabled children where claimant hurt her back from lifting a child. However, claimant also has experience in clerical work for 10 years, from 1985 to 1995 answering phones, filing and routing mail, which may not involve a lot of lifting or movement. Finding that the claimant is unable to perform work which she has engaged in in the past cannot be made with certainty, and analysis will proceed to Step 5.

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 is physically unable even with her health issues to do at least sedentary work if demanded of her. Claimant's own doctor indicates that she can perform such work and perhaps light work also. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant turned 47 in July, 2009), with limited education and an unskilled work history or no work history at all (claimant has an associate degree in computer science and business classes and substantial work history) who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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 to the point that she could do no type of work at all. 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 sedentary and light 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: September 22, 2009

Date Mailed: September 23, 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.

IR [REDACTED]

cc: [REDACTED]