

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: 2009-8103

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2009

Ionia 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 April 16, 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 October 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 7, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On November 12, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On November 21, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 22, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of sedentary work per 20 CGR 416.967(a), unskilled work per 20 CFR 416.968(a), pursuant to Medical-Vocational Rule 201.25.

(6) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant was 5' 3" tall and weighs 150 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked 2003 as a dispatcher where she took phone calls and dispatched orders to customers. Claimant also worked cleaning offices, as a secretary and as a waitress.

(8) Claimant alleges as disabling impairments: arthritis, right knee problems, back and bone pain, arthritis, migraines 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 since 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] claimant was a pleasant 46-year-old female in no apparent distress that looks her given age and was well developed and nourished. Claimant was oriented to time, person and place. Mood and affect were normal and appropriate to the situation. Peripheral pulses were full to palpation, no varicosities; extremities warm with no edema. Gait was stable and ambulated with a cane for support. Inspection and palpation of bones, joints and muscles was unremarkable. Bilateral gluteal muscles and bilateral hamstrings the muscle strength was 5/5. Lumbar range of motion showed normal flexion without pain, normal extension without pain, normal left LLF without pain, normal right LF without pain, normal LR without pain and normal RR without pain.

Coordination was good. (Page 4) Claimant had an assessment of low back pain, lumbar degenerative joint disease, sciatica, chronic pain, multiple myalgias and fibromyalgia. (Page 7) Medical report dated [REDACTED] indicated that claimant is a pleasant 46-year-old female in no apparent distress that looks her given age and was well developed and nourished. She was oriented to person, place and time. Her mood and affect were depressed. Gait was stable. She ambulated with a cane for support. Range of motion of the right knee was limited in all planes. Examination of the right knee was unremarkable. (Page 10) On [REDACTED], claimant was encourage to get involved in a water aerobics program of some type and further exercises of whatever type she can do and she was recommended a corticosteroid injection in her right knee. Claimant was diagnosed with osteoarthritis in her right knee and an injury to the right knee and chronic pain. The medical reviews in claimant's file also indicate that claimant has an obsessive-compulsive disorder, dysthymic disorder, major depressive disorder, recurrent, severe, with psychosis and a social phobia. On [REDACTED] claimant denied any auditory or visual hallucinations. She denied any suicidal or homicidal ideation, plan or intent. Her grooming and hygiene were appropriate. Her mood was basically euthymic. (Page 73) In the [REDACTED] medication review claimant was casually and neatly dressed. Her mood was described as depressed. Her affect was downcast and constricted. There was no sign of lability. Her speech was soft spoken but spontaneous, organized, goal-directed, without evidence of psychotic symptoms. She presented in a somewhat passive manner. There was no evidence of any abnormal movements or suggestions of EPS, tardive dyskinesia, or akathisia. (Page 71) A Medical Examination Report, DHS-49, indicates that claimant's mental state was tearful and unhappy and moderately depressed and that she had mild valgus, no effusion and walked with a limp and used a cane. On [REDACTED] she was 63" tall and weighed 145 pounds and her

blood pressure was 100/60. (Page 31) On [REDACTED] claimant had gall stones removed and her gallbladder removed. She tolerated the procedure well and was transferred to the recovery room in stable condition. (Pages 44 and 45)

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 contained in the file that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, the only corresponding clinical findings are that claimant does have mild valgus and no effusion in her right knee. There are no laboratory or x-ray findings listed in the file. Claimant does use a cane, however, none of claimant's doctors stated that her cane was a prescription and ordered by her doctor. The clinical impression was that claimant is deteriorating; however, the only finding made is that claimant experiences tenderness in her musculature and mild valgus with no effusion and a tearful and happy and moderately depressed state. 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 and the claimant have restricted claimant from tasks associated with occupational functioning based upon 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 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 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 work. Claimant's past work was sedentary and she should be able to perform secretarial duties or dispatch duties even with her impairments. This Administrative Law Judge finds that there is insufficient medical evidence upon which to base a finding that claimant is unable to perform work in which she has engaged in in the past. Thus, 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 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 at least sedentary work even with her impairments. The claimant testified that she lives alone and she is house-sitting and she is single with no children under 18 who live with her. Claimant has no driver's license and a neighbor takes her where she needs to go. Claimant does cook two to

three times per week and cooks things like pasta, muffins and pie. Claimant testified that she grocery shops one to two times per week and that she needs help with carrying the groceries and her neighbor usually helps her. Claimant testified that she cleans her home by making her bed, cleaning the bathroom, vacuuming even though it's hard and dusting. Claimant testified that her hobby is reading. Claimant stated that she can walk from the door to the office which is 50 to 75 feet, stand for 10 minutes at a time and sit for 10 to 15 minutes. Claimant stated that she cannot squat or bend at the waist but she is able to shower and dress herself and it's difficult to tie her shoes but she cannot touch her toes. Claimant testified that the heaviest weight she can carry is 8 pounds and that she is right handed and that she has tendonitis in her hands and wrists. 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 to an 8. Claimant stated that in a typical day she gets up and sits because she's stiff and then she finds something to wear, makes tea and does work on the computer sometimes. Claimant does a little housework and then she lies down for quite a bit of time.

The claimant's testimony as to her limitations indicates that she should be able to perform at least sedentary work even with her impairments.

Claimant testified on the record that she does have depression and a personality disorder.

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 oriented to time, person and place during the hearing. Claimant was responsive to the questions.

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. Under the Medical-Vocational guidelines, a younger individual (age 47), with a less than high school education and an unskilled work history who is limited to sedentary 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 11, 2009

Date Mailed: May 11, 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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