

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: 2009-9590

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 9, 2009

Wayne 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 9, 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 August 25, 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's impairments are non-exertional and that she could perform other work.

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

(4) On November 20, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work and is capable of performing unskilled work per 20 CFR 416.968(a).

(6) Claimant is a 49-year-old woman whose birth date is [REDACTED]. Claimant was 5' 4" tall and weighs 205 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked December 2005 as a temporary seasonal employee packaging holiday foods. Claimant has also worked at [REDACTED] as a cashier, as a cashier at [REDACTED], and a cashier at [REDACTED] gas station, and also worked as a stocker, an assembler, and a grinder.

(8) Claimant alleges as disabling impairments: hypertension, depression, vision problems, hearing problems and heart problems.

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that all of claimant's examination areas are normal except that she does have glaucoma and uses glasses and that she does need hearing aids. The Medical Examination Report indicates that claimant has depression and insomnia and anxiety and shyness. Claimant was 5' 3-1/8" tall and weighed 211 pounds and her blood pressure was 137/83. Her visual acuity in the right eye was 20/40 corrected and in the left eye was 20/25 corrected. Claimant's condition was stable and she could frequently pick up and carry 20 pounds or less and occasionally pick up 50 pounds or less. Claimant could stand or walk at least two hours in an eight hour day and the doctor indicated that she did need hearing aids and glasses. Claimant could do simple grasping, reaching, pushing and pulling and fine manipulating

with both of her upper extremities and could operate foot and leg controls with both feet and legs. Claimant was very shy and a little slow, according to the medical report of the general practitioner, [REDACTED]. (Pages 10-11) An [REDACTED] disability determination [REDACTED] evaluation indicates that claimant was alert and oriented to time, place and person. She was able to repeat four out of four numbers forwards and backwards immediately. She was unable to recall of the three objects after five minutes. She could recall two out of three objects after five minutes with cues. She knew her date of birth was [REDACTED]. She stated the past presidents were Bush and Reagan and that large cities were Westland and Garden City. Claimant stated that famous people were Elvis Presley and Demi Moore and she couldn't tell any current events. In her calculations she noted that $7 + 5 = 12$, $6 \times 5 = 30$, $100 - 7 = 93$, $20 - 3 = 17$ and that -3 is 14 and that -3 is 11 and -3 is 8. In response to the grass is greener on the other side of the fence she said that it is brighter and when asked the meaning of don't cry over spilt milk she said things could get better. When asked how a bush and a tree are different and similar she said that a tree is taller than a bush and they are both green. Claimant stated that if she found a stamped addressed envelope she would mail it and if she discovered a fire in a theater she would exit. Her GAF was considered 60 and her prognosis was considered guarded.

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 evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant did testify on the record that she has a driver's license and drives three times per week to see her family and to the store and to run errands and that the farthest she has to drive is five minutes. Claimant can see well enough to drive and could hear well enough to understand basic conversation during the

telephone hearing. Claimant testified that she does cook almost everyday and cooks things like chicken and dinner meals. Claimant testified that she grocery shops every two weeks with no help and cleans her home by doing light dusting, cleaning the floor, dishes, vacuuming and laundry. Claimant testified that some places that she stays that she cuts grass with a push mower and that she hobby is crossword puzzles. Claimant testified that she can walk ten blocks and can stand two to three hours but gets light headed a lot. Claimant testified that she can sit for an hour, shower and dress herself, squat, bend at the waist and tie her shoes but not touch her toes.

Claimant testified that the heaviest weight she can carry is 20 pounds and that she is right handed and her hands and arms are fine. Claimant testified that her feet get numb. Claimant testified that she does not have any pain and sometimes has mild pain which equals a 3 to a 4 on a scale from 1 to 10. Claimant testified that she does smoke a half a pack of cigarettes per day even though her doctor has told her to stop but she is not in a smoking cessation program. Claimant testified that she was in the hospital [REDACTED] for diverticulitis. In the instance case, the clinical impression is that claimant is stable and that her medical condition is basically normal. There is no finding in the medicals that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. The Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical 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. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. The medical doctor indicates that claimant has no mental limitations except that she is somewhat shy and maybe a little slow.

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's past relevant work was sedentary. As a food packager, cashier, light stocker or assembler and grinder, she would not be required extreme physical exertion 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 for the past 15 years. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will 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 job or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Claimant did testify that she does have hypertension, yet she continues to smoke despite the fact that her doctor has told her to quit. Claimant is in not in compliance with her treatment program.

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 testified on the record that she does have depression based upon her living situation and everything in general.

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 without hesitation and was responsive to the questions. Claimant had no complaints of pain. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either. Claimant may benefit from a referral to Michigan

Rehabilitation Services and the department should also have claimant fill out an application for the Adult Medical Program if the program is still open.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 16, 2009

Date Mailed: April 16, 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.

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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:

