

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: 2009-9616

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 15, 2009

Macomb 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 15, 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)?

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 March 24, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

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

(3) On October 16, 2008, the department caseworker sent claimant notice that her application was denied.

(4) On October 23, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 30, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.20.

(6) The hearing was held on April 15, 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 13, 2009.

(8) On May 26, 2009, the State Hearing Review Team again denied claimant's application stating in its denial that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.20 and commented that the claimant's treating podiatrist has given less than sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing simple, unskilled, light work.

(9) Claimant is a 48-year-old woman whose birth date is [REDACTED] Claimant is 5' 2" tall and weighs 212 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked September 2007 for the [REDACTED] doing assembly and is currently on disability from that company and receives [REDACTED] per month in life insurance long-term disability. Claimant has also worked as a certified nursing assistant in a community hospital.

(11) Claimant alleges as disabling impairments: heel spurs, cardio obstructive pulmonary disease (COPD), hip pain, hypertrophied bone as well as plantar fasciitis, hypertension, bone spurs in the hip 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).

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 in two years. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report in the file dated [REDACTED] indicates that claimant had fatigue and appeared in pain. She wheezed but had no tachypnea. She had a slow gait but had no weakness. She was normal in other areas of her examination report. The clinical impression was that she was stable

and her limitations are not expected to last more than 90 days. She can stand or walk at least two hours in an eight hour day with discomfort and she can use her upper extremities for simple grasping, reaching, pushing/pulling and fine manipulating and can operate both foot and leg controls and she did not medically require assistive devices for ambulation. She had no mental limitations.

A podiatrist Medical Examination Report indicates that claimant is normal in all areas except she had pain and difficulty walking and wearing shoes from an examination on [REDACTED] and that she can never carry any weight but she was stable and didn't need assistive devices to walk. She did have hypertrophied bone and pain and swelling and had difficulty ambulating.

A [REDACTED] form at pages 4 and 5 of the medical reports indicates that claimant was obese but she was well-developed and well-nourished. The claimant was fairly cooperative and does not appear in acute distress. She was awake, alert and oriented x3. She was dressed appropriately and answered questions relevantly. She was 5' 2" tall and weighted 221 pounds. Her pulse was 71. Respirations were 16 and blood pressure was 142/85. Her head was normocephalic and atraumatic. Her eyes had no icterus. Conjunctiva was not erythematous. Cornea was clear. Ears in the ear canals were clear with intact tympanic membranes. Nasal mucosa was not congested. The claimant was edentulous. She had upper dentures. Her throat was not erythematous. Her neck was supple with no JVD or tracheal deviation. No lymphadenopathy or accessory muscle use. Thyroid was not visible or enlarged. Her chest was symmetrical with equal expansion. Lung fields were clear to percussion and auscultation. There were no rales or wheezes audible. There was some coarse breathing at the lower part of the lung fields. There was no cough, accessory muscle use, retraction or cyanosis noted. Cardiovascularly, she had regular heart rate and no murmur audible. Her abdomen was

soft and non-tender. Bowel sounds were present. Liver and spleen were not enlarged. There was no significant skin lesions noted. In her extremities there was no tenderness in the lumbosacral spine area. No obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, no ankle edema. No chronic leg ulcers, varicose veins, muscle atrophy, joint deformity or enlargement noted. Claimant was able to get up from the chair and table without assistance. There was no paravertebral muscle spasm noted. Deep tendon reflexes were within normal limits in the upper and lower extremities. Straight leg raising was negative to 90 degrees bilaterally but there was pain at the right hip with flexion at 100 degrees on the right side. The claimant was unable to do heel walking, toe walking and tandem walking with bare feet because she complained of numbness on the soles of both feet but the claimant was able to walk normally with her shoes on and she could do tandem walking, heel walking, and toe walking to a fair extent. Romberg and finger-toe testing were fairly well done. Squatting and recovering from squatting were done to a fair extent. Gross and fine dexterity appeared bilaterally intact. Neurologically, the claimant was awake, alert and oriented to person, place and time. Vision without glasses was 20/40 in the right eye, 20/100 in the left eye. Vision with glasses was 20/20 bilaterally. No ptosis or nystagmus noted. Extraocular movements were intact. Pupils were equal, round and reactive to light. Face was symmetrical. The claimant appeared to hear conversational voice. The jaw resisted closure and swallowing was intact. Gag reflex was intact. Uvula was midline. Head and shoulder movement against resistance appeared fairly equal. Tongue protruded in the midline. There was no tongue atrophy or fasciculations seen. Sensory function was grossly intact to pinprick and touch. Motor function was normal with full range of motion of all extremities. There was fair muscle tone without flaccidity, spasticity or focal paralysis. Cerebellar function, there was no ataxia. No nystagmus. Finger-to-nose test was done

faire well. Gait was steady without walking aid. The impression was that claimant had COPD and there was no evidence of ankle edema and she may need a pulmonary function test to assess lung function and to rule out obstructive lung disease but her lungs were clear to auscultation and there were no rales or wheezes present.

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 has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The DHS-49s indicate that claimant's examination areas are normal with the exception of problems with her feet and some muscle weakness. There is no laboratory or x-ray findings listed that support the limitations made on the DHS-49. The clinical impression is that claimant is stable; 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.

Claimant testified on the record that she has depression since she has been off work because she has stress and her life and health aren't good and she can't work. 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. Claimant was able to answer all the questions at the hearing and was responsive to the questions. She was alert and oriented to person, time and place during the hearing.

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).

This Administrative Law Judge finds that 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 relevant work. This Administrative Law Judge finds that claimant does not have any physical restrictions in her clinical medical reports and therefore could probably do her prior work as a certified nursing assistant or work in an assembly plant even with her restriction. Therefore, if claimant had not already been denied at Step 2, she would be denied again at Step 4. Even if assuming claimant could not do any of her prior work, this 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 light or sedentary work even with her impairments. Claimant testified that she lives alone in an apartment and she is divorced with no children under 18. Claimant does have a driver's license and she does drive to the doctor and the grocery store every other day and usually drives about 15 miles as the farthest drive. Claimant testified that she does microwave food one time per day and that she grocery shops every three days with no help because she has problems standing in lines for long periods of time. Claimant testified that she does dust, vacuum, do dishes and clean her bathroom and she takes care of her dog which is a black labrador retriever. Claimant can walk a half a block and uses a cane occasionally which is not prescribed by her doctor. Claimant testified that she can stand less than 10 minutes but she can sit for an hour at a time. Claimant testified that she can squat but not get up, bend at the waist, shower and dress herself, tie her shoes but cannot touch her toes. Claimant testified that the heaviest weight she can carry is 10 pounds and that she is left-handed and her hands and arms are fine. Claimant testified that her level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 3/4. Claimant testified that she does smoke 10 cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant is not in compliance with her treatment program because she continues to smoke despite the fact that her doctor has told her 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 testified that in a typical day she gets up and has coffee and a cigarette and watches television and walks with her dog if the weather is okay. Then she lies down because her hips and feet hurt, then eats dinner and walks her dog again and goes to bed.

This Administrative Law Judge finds that 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. In addition, claimant did testify that she does receive some substantial relief from her pain medication. There is also no objective medical 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 does not appear to be severely restricted in her activities of daily living, social functioning, concentration, persistence or pace and ability to tolerate issues and demands associated with competitive 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 light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 48), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 and retroactive Medical 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: June 30, 2009

Date Mailed: June 30, 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:

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