

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: 2010-10434
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2010
Ottawa 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 February 11, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother [REDACTED]

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 17, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 29, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work per 20 CFR 416.920(E), namely as a cashier.

(3) On October 5, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On November 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 22, 2009, the State Hearing Review Team again denied claimant's application stating that she retains the capacity to perform a wide range of simple, unskilled work, and using Vocational Rule 204.00(H) as a guide.

(6) Claimant is a 27 year old woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 170 pounds, after gaining 10 pounds due to lack of energy. Claimant completed 12th grade, was in special education resource room while in school, can read at a 5th grade level, write simple words, but has difficulty with even basic math.

(7) Claimant states she last worked in 2008 as a pharmacy technician at [REDACTED], job she held for 4 ½ years and for which she received on the job training. Claimant was fired from this job for dishonesty about schedule changes and due to problems with managers.

(8) Claimant has also been a chore service provider in 2009 for couple of weeks for her mentally ill sister, cashier at a grocery store for 2 years, and server/dishwasher at a retirement center for 4 years.

(9) Claimant currently lives with friends and receives food stamps, and her mother helps her financially. Claimant has a driver's license, drives every day a volunteer bus for Headstart school dropping and picking up kids from school, and is paid in gift cards for this

activity. Claimant also helps get children ready for school where she lives and takes care of them after school.

(10) Claimant does not cook because she does not know how, but grocery shops, cleans the house she lives in, bathes and dresses herself, and has no problems sitting, standing or walking.

(11) Claimant alleges as disabling impairments depression, bipolar disorder, anxiety issues due to stress, lack of coping skills, and excessive vaginal bleeding.

(12) Claimant has applied for Social Security disability and been denied, and is appealing the denial.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 for pay since 2008. 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 or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a Medical Examination Report of May 20, 2009 indicating all of claimant’s examination areas are normal and her condition stable.

On July 14, 2008 claimant had a psychiatric admission due to worsening symptoms of her depression. Claimant states her depression was due to a few psychosocial stressors, including financial problems, break up with a boyfriend, having a new manager at work who was writing her up, and a sick grandfather. Claimant denied she wants to harm herself. Claimant reported never having inpatient psychiatric care, and denied any previous trials of antidepressants. Claimant was struggling with a recurrent episode of depression, but currently did not meet criteria for major depressive disorder. Claimant wanted to try an antidepressant and was interested in resuming therapy. There was no need for inpatient psychiatric care at that time, and claimant’s prognosis was good with continued treatment.

Claimant was seen at [REDACTED]) on [REDACTED] for an assessment after her mother called and made the appointment. It was reported that the claimant

was fired from her job in December, 2008 and appears depressed with low motivation and energy. Claimant came to the assessment appointment alone and reported feeling depressed and anxious since losing her job. Claimant also reported couple of incidents of shoplifting which resulted in arrest. Her depression has been chronic since losing her job, and she has depressed mood, poor sleep, loss of interest in usual activities, and impaired concentration. Claimant also reported daily panic attacks. She would like to achieve improved mood, decreased anxiety, and regain her ability to function normally.

Claimant reported making a suicidal attempt/gesture when she was a teenager, but none since, and denied any current or recent suicidal ideation. Claimant has had counseling at various times in her life, most recent being in July, 2008 for depression when she had a few outpatient sessions with a therapist and psychiatrist. Claimant reported drinking alcohol 1-2 times per week, and using marijuana as it alleviates her anxiety. Claimant met the criteria for Adjustment Disorder with Depressed Mood, panic disorder without agoraphobia, alcohol abuse, and marijuana dependence. Claimant appeared to be motivated to change at this time. Claimant's GAF was at 60.

Claimant was seen by [REDACTED] again on [REDACTED] for a psychiatric evaluation and treatment for her depression. Claimant was alert and oriented, made good eye contact, her grooming and hygiene were good, and she was dressed appropriately for the weather. Claimant's speech was relevant, goal directed, and nonpressured. She answered questions and initiated conversation, was open about reporting her symptoms, and her speech was spontaneous. Claimant's thoughts were organized, there was no evidence of delusional thinking, hallucinations, obsessions, compulsions, paranoia, ideas of reference, or thought broadcasting. Claimant's memory, concentration and cognition were intact, and she denied any suicidal or

homicidal ideation. Claimant was living with a friend and helping take care of three children. Claimant's diagnosis was mood disorder NOS of the bipolar type, alcohol abuse, cannabis dependence, ADHD NOS by history, and history of migraine headaches and learning disability. Claimant's GAF was 55-60. Treatment recommendations were to begin treatment with a mood stabilizing medications, restart Celexa for depressive symptoms, avoid stimulant medication, and continue individual therapy.

Claimant testified that the last time she was seen at [REDACTED] was in [REDACTED].

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant testified about a variety of jobs she has held in the past for considerable periods of time, that she currently takes care of children for a friend, gets them off to school and takes care of them after school, and that she also drives a volunteer bus for [REDACTED]. Claimant's hearing testimony is logical and specific. Claimant's mother however did interject several times to present the claimant as developmentally delayed, possibly having a mild form of autism, not being able to make eye contact, start or finish anything, etc. Neither the medical record provided for this hearing or claimant's hearing testimony supports the testimony of claimant's mother presenting her as having an extremely serious mental impairment. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony is insufficient to establish that claimant has a severely restrictive mental impairment. Claimant has no physical impairment. Claimant has failed to meet her burden of proof at Step 2 and must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was as a pharmacy technician, cashier and server/dishwasher. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability 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 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 [REDACTED], published by the [REDACTED] [REDACTED]... 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 lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least medium work if demanded of her. 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 light, sedentary and medium work, or possibly even heavy work. Under the

Medical-Vocational guidelines, a younger individual (claimant is age 27) with a high school education and a history of unskilled work or even no work history at all, is not disabled per Vocational Rule 203.28.

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. 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 Bridges 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. BEM, 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, sedentary and medium 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: June 21, 2010

Date Mailed: June 21, 2010

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/tg

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