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: 2010-13773
Issue No: 2009; 4031
Case No: [redacted]
Load No:
Hearing Date:
February 2, 2010
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 February 2, 2010. 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 September 16, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 30, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.

(3) On November 17, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On November 19, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 5, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

> The claim ant was hospitalized in July 2008 with alveolar hemorrhage. She was found to have rheum atoid arthritis. In December 2009, her lungs were clear. Th ere was no join t deformity or enlargem ent on exam ination. There was no loss of gross or fine dexterity. She repo rted heart damage, but there was no evidence on examination of congestive heart failure. The claimant's impairments do not m eet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claim ant retains the capac ity to perform a wide range of light work. In lieu of detailed work histo ry, the claim ant will b e returned to other wo rk. Ther efore, based on the claim ant vocational profile of a younger indi vidual, high school equivalent education a nd histo ry of unskilled work, MA-P is den ied using Vocational Rule 202.20 as a guid e. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the natu re and severity of the claimant's im pairments would not preclude work activity at the above-stated level for 90 days.

(6) Claimant is a 49-year-old woman whose birth date is [redacted] Claimant is 5' 5 ½" tall and weighs 198 pounds. Claimant recently gained 50 pounds. Claimant has a GED and is able to read and write and does have basic math skills.

(7) Claimant last worked in 2004 cleaning offices. Claimant has also worked doing private duty nursing, and as a cook and as a caterer.

(8) Claimant alleges as disabling impairments: rheumatoid arthritis, hypertension, bronchitis, damaged lung, damaged heart and residual damage from a gunshot wound to the left hand, as well as shortness of breath, depression and stress.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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 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 <u>not</u> 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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a December 18, 2009 Medical Examination Report indicates that claimant was well-developed, well-nourished, cooperative and in no acute distress. She was awake, alert and oriented x3. The examinee was dressed appropriately and answered questions fairly well. Her height was 5' 5 1/4" and her weight was 205 pounds. Her pulse was 80 and her respiratory rate was 14. Blood pressure was 142/84, 140/82 and 140/90. Visual acuity without glasses was 20/25 on the right and 20/25 on the left. HEENT was normal cephalic and atraumatic. Eyes, lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema or exuadates noted. PERRLA, extraoccular movements intact. Ears, no discharge in the external auditory canals. No bulging erythema,

perforation of the visible tympanic membrane noted. In the nose, there was no septal deformity, epistaxis or rhinorrhea. The mouth and teeth are in fair repair. The neck was subtle. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. ENT, external, and especially the ears and nose reveal no evidence of acute abnormality. In the respiratory, the chest is symmetrical and equal to expansion. The lung fields are clear to auscultation and percussion bilaterally. There are no rales, rhonchi or wheezes noted. No retractions noted. No accessory muscle use is noted. No cyanosis noted. There is no cough. In the cardiovascular area, normal sinus rhythm S1 and S2, no rubs, murmur or gallop. In the gastrointestinal area, soft, non-distended, non-tender with no guarding, rebound, palpable masses. Bowel sounds are present. Liver and spleen are not palpable. In the scan there was no significant skin rashes or ulcers. In the extremities, no obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement is noted. There was mild tenderness to palpation in the lower lumbar area. In the bones and joints, the examinee does have a cane but did not use it on exam today. She has a limp on the right side. She has an elastic brace over the right knee. Tandem walk was done slowly. She was unable to do heel walk and toe walk. She was able to squat 40% of the distance and recover and bend 50% of the distance and recover. Grip strength, see JAMAR. The examinee was right-handed. Gross and fine dexterity appeared bilaterally intact. Abduction of the shoulders was 0-140. Flexion of the knees was 0-140. Straight leg raising while lying is 0-50, and while sitting 0-90. (Page 22) In the neurological area, the patient was alert, awake and oriented to person, place and time. Cranial nerve II, vision as stated in the vital signs. III, IV and VI, no ptosis, nystagmus. Perrla Pupils 2 mm bilaterally. V, no facial numbness.

Symmetrical response to stimuli. VII, symmetrical facial movements noted. VIII, can hear normal conversation and whispered voice. IX and X, swallowing intact, gag reflex intact. Uvula, mid-line. XI, head and shoulder movement against resistance were equal. XII, no sign of tongue atrophy. No deviation with protrusion of tongue. Sensory functions were intact to sharp and dull gross testing. Motor examination revealed fair muscle tone without spasticity or paralysis. There was a slight limp on the right side. The impression was lung disease. The claimant had a history of interstitial lung disease. She was being followed by her pulmonologist and was admitted July 2008 and did have a tube thoracostomy. She has sleep apnea, currently uses a [redacted] She has rheumatoid arthritis, chronic joint pain, and heart disease with irregular heartbeat. She does take [redacted] on a daily basis at least twice a day and needs further follow up. The medical source statement indicated that based on the pulmonary exam the examinee would have difficulty with prolonged standing, stooping, squatting, lifting, and bending. She does have chronic lung and heart problems and she needs ongoing care for these problems. She should avoid toxins, fumes, smoke and dust, as well as extremes of exertion. (Page 23)

A December 18, 2009 examination of both shoulders revealed the osseous structures to be within normal limits. The articular structures are well preserved. No evidence of fracture, dislocation, osteoblastic or osteolytic activity noted. The soft tissue structures were unremarkable. The examination of the left hand revealed an old gunshot wound involving the fourth digit with deformity seen secondary to old fracture. Examination of the right hand revealed osseous structures to be within normal limits. The articular structures are well preserved with no evidence of fracture, dislocation, osteoblastic or osteolytic activity noted. The soft tissue structures are unremarkable. (Page 24) Examination of both wrists revealed the osseous

structures to be within normal limits. The articular structures were well preserved. No evidence of fracture, dislocation, osteoblastic or osteolytic activity is noted. The soft tissue structures are unremarkable. (Page 25)

A medical examination report in the file, dated September 21, 2009, indicates that claimant's blood pressure was 140/90, where she was dominant right hand and she had 20/20 vision. She was normal in all examination areas except for oracitis in both lungs and deformed hands and ankle. The clinical impression was that claimant was deteriorating where she could never lift any weight, that an assistive device was medically required and needed for ambulation, and that she could not do simple grasping, reaching, pushing or pulling, or fine manipulating with either upper extremity or operate foot or leg controls with either foot or leg. (Page 5-7)

A rheumatologist assessment, dated September 21, 2009, indicated claimant cannot meet her needs in the home and that she needs assistance with laundry, bathing, cooking and cleaning.

A September 21, 2009 letter from [redacted]. , indicates that claimant's diagnoses are rheumatoid arthritis with alveolar hemorrhage, chronic obstructive lung disease, obstructive sleep apnea treated with a C-PAP hcm h2o and hypertension. (Page 9)

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 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 insufficient clinical findings that support the reports of symptoms and limitations made by the claimant. This Administrative Law Judge cannot give weight to the Medical Examination Report (DHS-49) as it is inconsistent with the great weight of the evidence. The DHS-49 indicates that claimant cannot do anything with her

hands or feet or legs, that she cannot ever lift any weight. There is no notation of any severe abnormalities in any part of claimant's body, however. There are no laboratory or x-ray findings listed on the DHS-49. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant experiences pain and tenderness in her musculature. 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, Medical Examination Report, has restricted claimant from tasks associated with occupational functioning based on the claimant's reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that the claimant has met the evidentiary burden of proof. This Administrative Law Judge finds that the medical record is insufficient to establish the claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations resulting from her reportedly depressed state.

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 no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers from a severely restrictive mental impairment. There is 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.

For these reasons, this Administrative Law Judge finds that claimant has failed to meet the 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. Claimant's past relevant work was light work as a cook or caterer, or as an office cleaner, that does not require strenuous physical exertion. There is insufficient objective medical evidence upon which this Administrative Law Judge can base a finding that claimant is unable to perform work which she has engaged in, in the past. Therefore, 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 light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

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. In addition, claimant did testify that she does receive some relief from her pain medication. 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. Under the Medical-Vocational guidelines, a younger individual (age 49), with a high school education and an unskilled work history who is limited to light 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. BEM, Item 261, p. 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 l aw, 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 17, 2010

Date Mailed: May 18, 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.

LYL/cv

cc: [redacted]