

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: 2010-15395
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. Claimant was represented by [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 November 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 4, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 11, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On December 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 21, 2010, the State Hearing Review Team again denied claimant's application stating that she retains the physical residual functional capacity to perform light exertional work of a simple and repetitive nature. Therefore, the claimant retains the capacity to perform her past relevant work which was light and unskilled.

(6) Claimant is a 48 year old woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 180 pounds. Claimant completed 9th grade, has no GED, and was in special education classes all through grammar school. Claimant can read a little, cannot write, and can only do basic math.

(7) Claimant states that she last worked in 2003 as a cashier at [REDACTED] for over a year, job that ended due to lack of work. Claimant has been living off of child support payments and now her 6 children support her. Claimant lives with her children and receives food stamps.

(8) Claimant has no driver's license due to a DUI from several years ago and many traffic fines. Claimant cooks simple meals, grocery shops but has a hard time remembering what she is supposed to be doing, does not do any housework or outside work, and watches TV to pass the time.

(9) Claimant alleges as disabling impairments right knee degeneration, depression and anxiety.

(10) Claimant has applied for Social Security disability and been denied, and is appeal 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 (RFT).

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 (RFT).

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 since year 2003. 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).

Claimant's medical record includes a Medical Examination Report for an exam of September 17, 2009 indicates as claimant's diagnosis post traumatic degenerative arthritis in the right knee. Claimant limps favoring her right knee but is otherwise healthy appearing and in no apparent distress. Medical exam reveals that claimant's pulses are intact in both feet but that she has knee tenderness along medial aspect of the posteromedial joint line. Collateral ligaments are stable. X-rays show no acute fracture or dislocation, and there is postsurgical change with metallic screw in place in proximal fibula. MRI scan of the right knee shows extensive tricompartmental osteoarthritis changes which may be medial meniscal degenerative tear vs. old meniscal injury. Claimant's condition is stable but she is limited in lifting/carrying up to 25 pounds occasionally, standing/walking about 6 hours in an 8-hour workday, and has no limitations in sitting. Claimant can use both hands/arms for repetitive actions and can also use both feet/legs for operating foot/leg controls. Office note of the same date indicates that the claimant is using a large amount of Vicodin for relief of pain and was told that is not going to be a good long-term solution for her knee pain problems, and she should consider knee replacement surgery.

Medical Needs report completed in November, 2009 stating as claimant's diagnosis post traumatic degenerative arthritis in the right knee. Claimant does not need assistance with any personal care activities, and she can work but has work limitations in that she should avoid heavy lifting, prolonged walking or standing, squatting and climbing.

 done as part of her application for Social Security disability benefits describes the claimant as a

cooperative, neat and clean woman who is mildly anxious. Claimant was attentive, exhibited pain and abnormal gait and was limping as she walked. Her speech was pressured and loud, but nevertheless, she expressed herself in a clear manner, but tended to ramble on and in a somewhat disorganized fashion. There were no signs of hallucinations, delusions or confusion and no reports of suicidal or homicidal ideation. Claimant's mood was depressed and her affect was flat and constricted.

Claimant reported being hit by a car in 2004 while she was a pedestrian and having surgery on her right leg that causes her problems at the present time. Claimant reported being depressed since childhood, crying frequently and having low self-esteem with no motivation or inspiration. Claimant denied any psychiatric hospitalization, reported being on antidepressants in the past and currently taking Xanax to manage her anxiety. Claimant had not participated in any psychotherapy, indicating she is unable to drive to get to the appointments and depends on her 17 year old son to take her around. Claimant reported that because of her depression she is unable to do most things, gets tired very easily and has no motivation to get things done.

Claimant was oriented to person, place and time, but her immediate memory was poor, she was unable to perform a serial subtraction and when encouraged to persist exhibited difficulties and poor concentration and mental fluency. Claimant's use of common sense, reasoning and judgment was also noted to be poor. Examiner concludes that the obtained findings are seen as an invalid representation of claimant's current mental status due to her poor effort and questionable motivation. Due to her deficits, claimant is unable to independently manage any funds that might be awarded to her, and diagnostic impression is that of major depression (by history).

Psychological Medical Report of January 5, 2010 quotes the claimant as saying “mentally I can’t work”. Claimant complains of crying constantly and that she has been depressed all of her life, with her depression being worse after she was hit by a car in 2005. Claimant reported having surgery on her right leg and that she has pain daily and constantly in both legs. Claimant stated she withdraws from others and isolates herself, has no interest or motivation, but does enjoy her son. Claimant also stated she sleeps more than normal but eats less than normal, and denied any thoughts of suicide or suicide attempts. She complained that she cannot read something and remember it, and she has problems with comprehension, memory and concentration. Claimant does not need help dressing, feeding or bathing herself and is able to fix a simple meal. Claimant had no been to a pain management program.

Claimant reported completing 8th grade in special education and that she has never been in prison, but that she has been in jail 3 or 4 times. Claimant receives child support payment and food stamps. She is single and never married, and has 6 children between 18 and 33 years old. Claimant was 5’3” tall and weighed 180 pounds. Claimant denied any history of substance abuse treatment and also denied current use of alcohol and drugs, but stated she did have problems with alcohol use in her early 30’s, and that she had also used crack cocaine, cocaine and marijuana in the past but not for the last 10 years.

Claimant lives in an apartment with her son, does not see her other children very much, but gets along with her 6 brothers and sisters and has 4 to 6 close friends outside of her family. Claimant reported as her only interest and activity currently being watching TV. When she is awake, claimant is watching TV and does some of the vacuuming, cooking and dishes, but no other household chores or yard work. Claimant came to this appointment via public transportation and she does not have a driver’s license. There were no posture or gait problems

noted, and her appearance was good but she is overweight. Claimant was in contact with reality and cooperative but subdued and depressed looking being tearful at times. Claimant was oriented, alert, her speech was clear, coherent and fluent, and her thought processes were relevant, logical, connected, and concrete. Claimant denied blackouts, delusions, hallucinations, paranoia, persecutory ideations, or obsessions. She was fully oriented to time, person and place.

Claimant's diagnosis was that of major depressive disorder-recurrent, moderate, history of alcohol and drug abuse in long-term sustained remission, anxiety disorder NOS, limited intellectual ability, complaints of chronic leg pain, and GAF of 50 to 55. Examiner noted that potential for the claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. For these reasons, this Administrative Law Judge finds that claimant has met her evidentiary burden of proof at Step 2.

The analysis proceeds 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, the Administrative Law Judge must address claimant's ability to perform past relevant work. Claimant has minimal work history with last job being a cashier at a store in 2003, job she held for over a year. This type of work would be simple and repetitive in nature

and it would appear that the claimant could perform such work at the present time. Medical examination report of September, 2009 from claimant's own doctor does not reveal any drastic physical limitations for her. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant could be 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 light work if demanded of her. Claimant would have some mental limitations, but they are not of a disabling nature that would prevent performance of simple work tasks.

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 sedentary and light work at least. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 48), with limited education and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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 sedentary and light 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 23, 2010

Date Mailed: June 24, 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

cc:

