

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: 2010-15942
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 4, 2010
Genesee 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 March 4, 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 May 5, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability, along with a retroactive Medical Assistance application for the months of February, March, and April 2009.

(2) On December 16, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments are nonexertional.

(3) On December 21, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On December 29, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 1, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work pursuant to 20 CFR 416.920(e) and stated in its comments that the claimant retains the residual functional capacity to perform at least unskilled, medium work. The claimant's past work was unskilled, medium. The claimant retains the capacity to return to past relevant work.

(6) The hearing was held on March 4, 2010. 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 March 8, 2010.

(8) On March 12, 2010, the State Hearing Review Team again denied claimant's application stating the claimant could perform past work per 20 CFR 416.920(e).

(9) On the date of the hearing, claimant is a 47-year-old female whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 190 pounds. Claimant is a high school graduate and has 1 ½ years of college, and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2002 for the [REDACTED] as a recreation specialist. Claimant has also worked as a group home aide and scanning products.

(11) Claimant alleges as disabling impairments: a nervous breakdown, hypertension, anxiety, depression, memory problems, stress, and muscle spasms.

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 not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2002. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record further indicates a mental residual functional capacity assessment in the record indicates that claimant is not significantly limited mentally in any area, and states that the claimant is able to understand, carry out and remember simple and moderately-detailed instructions; make judgments that are commensurate with the functions of unskilled and semi-skilled tasks, i.e. simple and moderately complex work-related decisions; respond appropriately to supervision, co-workers and work situations; and deal with changes in a routine work setting. In addition, she can set realistic goals or make plans independently of others. There are no problems with attention and she can concentrate sufficiently to perform moderately detailed tasks, all on a routine and regular basis. She is capable of semi-skilled work. (New Information, pages 98-100)

A psychiatric evaluation, dated December 23, 2008, indicates that claimant takes [REDACTED] and it controls her anxiety and depression, and she does fine on the medication. She walked into the office without difficulty. She had normal facial expressions and normal motor activity. Her stream of mental activity was spontaneous, goal-directed with normal rate and rhythm and normal reaction time. She was euthymic. Her affect was appropriate to content. She had no hallucinations, no delusions, no phobias, no obsessions, and no preoccupations. She was not suicidal, not homicidal. She was alert and oriented x3. She had normal, remote and immediate memory. Normal retention and recall. Calculations and general knowledge were normal. Her insight and judgment were fair. Her GAF was 55. She was diagnosed with major depression. (New Information, pages 84, 85, 86)

A mental residual functional capacity assessment, dated April 11, 2009, indicates that claimant is moderately limited in almost all areas, and there is no evidence of any limitation in any of the other areas. She was having difficulty interacting with others and having mood swings and panic attacks. (New Information, pages 16-17)

A medical examination report, dated and received May 5, 2009, indicates a clinical impression that claimant is stable and that she can lift and carry up to 50 pounds or more and that she could do simple grasping, reaching, pushing and pulling and fine manipulating with both upper extremities. She had some problems with comprehension.

A psychological evaluation, dated September 28, 2009, indicates that claimant was oriented to time, person and place and knew that she was in a psychiatrist's office. In memory tasks, she repeated 5 numbers forward and 4 numbers backward and recalled 2 of the objects 3 minutes later. For past few presidents, she named Barak Obama, Bush, Clinton, and Bush the father, and that she didn't know and others. Her date of birth was given as April 2, 1962. Five large cities were Chicago, L.A., New York, St. Louis, and Atlanta. Current famous people were

Michael Jackson, Patrick Swayze and Barak Obama. On calculation tasks, 100 minus 7 equals 93, 86, 79, 72 and 65. 2 plus 3 equals 5, 7 plus 9 equals 15, 3 times 8 equals 21, and 7 times 9 equals 63. Abstract thinking: The grass is greener on the other side of the fence was interpreted as you think things are better for somebody else. Don't cry over spilled milk, was interpreted to mean: Don't regret things beyond your ability, what's done is done. A bush and a tree are alike in that they are from the earth, and different in that ones lifespan is shorter, the bush. On judgment questions: If claimant found a stamped, addressed envelope she would put it in the mailbox. If she discovered a fire in a theatre, she would call for help and try to put it out. She was diagnosed with major depression and a history of alcohol and drug abuse. She would be able to independently manage any funds assigned if obtained. Substance abuse history was accurate. Her AXIS V GAF was 49. (New Information, pages 8-10)

A physical examination report, dated October 1, 2009, indicates that claimant was a middle-aged 47-year-old who was unkempt. She weighed 199 pounds. Her blood pressure was 138/74 in her left arm in a sitting position. Her temperature was normal. Respiration to 22. Pulse was 88 per minute, regular, good volume. Snellen was 20/30 in the right eye and 20/30 in the left eye. This was without corrective lenses. Color was within normal limits. Her HEENT was normocephalic. Pupils were equal, round and reactive to light and accommodation. Extraocular muscles are intact. Fundoscopy is benign. The throat was non-injected. Dentition was fair. The neck was supple. No evidence of any lymphadenopathy or thyromegaly. Carotids were bilaterally palpable with no bruit. The chest was clear to auscultation and percussion. Some mild increase in the AP diameter. The heart sounds 1 and 2 were heard. No gallop or murmur. No JVD. No edema. The abdomen was soft, non-tender to deep palpation. Bowel sounds were present and normal. Cranial nerves II-XII were intact. CNS – Central Nervous System examination, otherwise grossly within normal limits. Musculoskeletal system: The patient had a

normal gait. She was not using any accessory device such as a cane. The impression was major depression, anxiety neurosis, panic attacks, and essential hypertension by history. Blood pressure was well controlled. Mild coronary obstructive pulmonary disease (COPD), secondary to cigarette smoking. (New Information, pages 6-7)

Claimant testified on the record that she lives alone in an apartment and is single with no children under 18. Claimant testified she receives Food Assistance Program benefits in the [REDACTED] and that she doesn't have a driver's license because she got tickets. Her daughter takes her where she needs to go or she takes the bus. Claimant testified that she does cook two times per week and makes things like sandwiches and chicken and she grocery shops sometimes, but she doesn't like crowds. Claimant testified she cleans her home when she has the energy and she does dishes and dusts. Claimant testified that she watches her grandchildren who are ages 6 and 4, sometimes, but that is limited. She stated she is able to watch them by herself. Claimant testified she does read and watch television about ½ an hour a day each, and that she sleeps a lot. Claimant testified that she can stand for a few minutes, sit for two hours, walk one block and squat, bend at the waist, shower and dress herself, and tie her shoes and touch her toes if her stomach doesn't hurt. Claimant testified that her level of pain on a scale from 1 to 10 without medication was a 10 and with medication is a 5 or 6, and that she is right-handed and that she has muscle spasms in her hands and arms, and legs and feet. Claimant testified the heaviest thing she can carry is a gallon of milk. Claimant testified that in a typical day she lies in bed and tries to sleep because she doesn't have much to do. She testified she has mood swings and is irritated and has panic attacks, and that the panic is terrible. Claimant testified she attempted to commit suicide last year by taking pills, and that she fears something will happen to her and she is scared to go to sleep because she doesn't think she will wake up.

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 no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant the 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 that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, anxiety, panic attacks.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is a mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a

cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in 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.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. 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. 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), 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 law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance,

retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: June 16, 2010

Date Mailed: June 17, 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:

