

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: 2010-17403  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 23, 2010  
Kent 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 23, 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 December 16, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On January 11, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 14, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On January 22, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 16, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.20.

(6) Claimant is a 48-year-old woman whose birth date is [REDACTED] Claimant is 5' 5" tall and weighs 146 pounds. Claimant attended 1 year of college and is able to read and write and does have basic math skills.

(7) Claimant last worked [REDACTED] for approximately two weeks. Claimant has also worked in food service for 3 months and stated that she was a prostitute and she is basically homeless and her boyfriend supports her.

(8) Claimant alleges as disabling impairments: a bipolar disorder, post traumatic stress disorder, elbow fracture with the left elbow replaced and a crack addict for 25 years.

#### 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

The objective medical evidence on the record indicates that claimant sustained a severe fracture of her left elbow as well as a dislocation of her left elbow on May 20, 2009. This was treated with a closed reduction in the emergency room where they planned for operative intervention. She received a debridement of the left elbow and open reduction, radial head implant replacement and casting at 90 degree position of verification of reduction under the C-arm. Her condition on discharge approximately 3 days later was improving (pp 54-55). On June 10, 2009 when claimant was in the hospital, claimant had a positive drug screen showing benzodiazepines and cocaine. (p52) A physical examination on May 22, 2009, claimant's temperature was 98.4 degrees Fahrenheit, pulse of 82, respiratory rate of 18, O2 saturation at 98% on room air and blood pressure 111/74. The claimant was alert and oriented x3. She appeared in no acute distress. No stuttering or slurring in her speech. Head was normocephalic and atraumatic in the eyes EOMS were intact. PERRLA. No injection, icterus or discharge. In the mouth there was positive wet mucous membranes. The neck and throat were supple and non-tender. Chest and lungs were clear to auscultation bilaterally. Negative diminished rough sounds. Negative crackles. Negative wheezing. Negative stridor. Heart: S1 and S2, no auscultated

murmurs. Regular rate and rhythm. Abdomen is soft and nontender. The back had no palpable pain. In the extremities, there was a splint placed over the left upper extremity. The claimant points to her elbow and states that the area was painful. Her fingers and range of motion was intact. Neurovascular was intact. Positive 2 second capillary refill. The rest of the extremities, range of motion was intact. Neurovascular was intact. In the neurologic area, cranial nerves 2-12 were intact. (p. 14)

Claimant testified on the record that she does not have a driver's license and she walks or her sister takes her where she needs to go. Claimant lives from house to house and sometimes her boyfriend supports her. Claimant does cook one time per day, and cooks things breakfast, bacon, eggs and toast. Claimant testifies she grocery shops one time per month but she needs help carrying the bags. She cleans her home by making the bed and doing laundry with her right hand. Claimant testified that she likes to sing and watch television 8-9 hours a day. Claimant testified that she can stand for 2 hours, sit for 8 hours with no limits and walk with no limits. Claimant testified that she is able to squat, bend at the waist and touch her toes but cannot tie her shoes. Claimant testified that she can shower and dress herself. Claimant testified that her level of pain on a scale of 1-10 without medication is an 8, and she takes illegal Valium and illegal Vicodin or whatever she can get. Claimant testifies that the heaviest weight she can carry is 10 pounds with the right and she can't carry anything with the left arm and that her legs and feet are fine. Claimant testifies that she does smoke a half a pack of cigarettes per day and her doctor's told her to quit and she is not in a smoking cessation program. Claimant testified that she used to drink two 24 ounce beers a week and that she does still drink that and testified that stopped doing crack approximately one month before the hearing and her doctor told her to quit. The clinical impression is that claimant is stable. Claimant alleges as the following disabling mental

impairments: bi-polar disorder, post traumatic stress disorder and depression and stated that she is depressed because her 8 year old son drowned some years back and that she was child abused for over 20 years. Claimant testified she doesn't like people and that she is nervous and she used to be a prostitute.

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 Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved.

The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

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 is deteriorating. 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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. PEM, 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/

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

Date Signed: April 20, 2010

Date Mailed: April 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.

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