

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: 2010-1755
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
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 November 19, 2009. 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 4, 2009, claimant filed an application for Medical Assistance, State Disability Assistance, and retroactive Medical Assistance benefits alleging disability.

(2) On July 13, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 201.27.

(3) On July 14, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 19, 2009, the State Hearing Review Team again denied claimant's application stating that claimant could perform other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.07 and stated that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work based on a Vocational Rule will be used.

(6) Claimant is a 56-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3-1/2" tall and weighs 250 pounds. Claimant recently lost 34 pounds. Claimant attended one year of college and studied computer data processing and is able to read and write and does have basic math skills.

(7) Claimant last worked October 12, 2007 as a [REDACTED] representative representing the janitors union. Claimant has also worked as a janitor and in service jobs and her unemployment compensation benefits ended September 2009.

(8) Claimant alleges as disabling impairments: coronary artery disease with a triple bypass in [REDACTED], diabetes mellitus, and knee and foot problems.

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).

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 2007. Therefore, claimant is not disqualified from receiving disability at Step 1.

It should be noted that claimant was receiving unemployment compensation benefits through September 2009 and she was not laid off based upon health problems. In order to be eligible to receive unemployment compensation benefits, a person must be monetarily eligible, totally or partially unemployed, have an approvable job separation, and meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. Generally, an individual must be available for and seeking full-time employment. Under certain circumstances a person with a disability may be able to limit his or her availability for work to part-time only. However, the person must demonstrate that the impairment does not effectively remove him or her from

the labor force. This Administrative Law Judge finds that based upon claimant's receipt of unemployment compensation benefits, she was not disabled. However, this Administrative Law Judge will proceed through the sequential evaluation process for the sake of argument.

The objective medical evidence on the record indicates that a [REDACTED] [REDACTED] medical report indicates that claimant was well-developed, well-nourished, and in no acute distress. She was alert, awake, and oriented to time, place, and person. She was morbidly obese. Her vital signs were height 5'4" tall, weight 258 pounds, pulse 78, respiratory rate 14, blood pressure 120/68, visual acuity without glasses in the right eye was 20/30 and the left eye was 20/25. HEENT: She was normocephalic/atraumatic. Pupils were equal, round, and reactive to light. Extraocular muscles were intact. Sclera was non-icteric. Oropharynx was clear without any lesions. Neck was supple. No JVD noted. No bruit. No thyromegaly. In the respiratory the chest was clear to auscultation bilaterally. No rales or rhonchi. There was wheezing bilaterally. No retractions or accessory muscle usage. In the cardiovascular area she had regular rate and rhythm. No rubs, murmurs, or gallops. In the gastrointestinal the abdomen was soft and non-tender with no organomegaly. No rebound or guarding. No palpable masses. In the extremities the claimant had normal gait and stance. The claimant was able to get on and off the examination table without difficulty. She had a problem with squatting secondary to osteoarthritis in the knees. The claimant had good handgrip bilaterally. There was no joint deformity or enlargement. In the neurological area the claimant was alert, awake, and oriented to person, place, and time. Cranial nerves II – XII were intact. Sensory functions were intact to sharp and dull gross testing. Motor examination revealed fair muscle tone without flaccidity, spasticity, or paralysis. The impression was that the claimant ambulated well without an ambulation aid. She was right-handed. There was no muscle atrophy

or weakness. There was no neurological disorganization causing stumbling, lurching, or falling. The ability to squat was limited secondary to arthritis in both knees. (p. 4)

The claimant has coronary artery disease and was status-post bypass surgery. The claimant has done well since surgery, but she still had limitations as to how far she can walk and do activities, which was multifactorial, possibly due to her morbid obesity. She denied any associated symptoms. There was no history of associated phenomenon such as diaphoresis, dyspnea, fear of death or nausea, just shortness of breath with activities as mentioned above. She does not use nitroglycerin. She had a history of hypertension which was not treated in the past. With cardiac medication her blood pressure was well controlled. There was no evidence of heart failure. There was no pulmonary or peripheral edema. Her diabetes was not well controlled. She had no ability to check her sugar secondary to lack of insurance. She was on multiple medications and is now just on one which is inadequate. She complained of neuropathy in the lower extremities. The coronary artery disease is a possible complication of diabetes. Fundus examination was satisfactory with papilledema, AV nicking, or retinopathy. Based on the examination, the claimant should be able to work 8 hours per day. There is limitation on walking to two blocks and standing for less than two hours at a time. There is no limitation with pushing and pulling. Carrying should be limited to 20 pounds. The claimant should be able to use bilateral hands for fine manipulations. There is limitation on climbing stairs, ropes, ladders, and scaffolding due to the above impressions and body habitus. (p. 5)

An [REDACTED] Medical Examination Report indicates that claimant was 64" tall and weighed 256 pounds. Her blood pressure was 124/64. She was normal in areas on examination. The clinical impression was that she was stable and that she could frequently lift less than 10 pounds and could occasionally lift 10 pounds. (pp. 12-13)

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. Even though claimant's bypass operation made her condition severe, she has recovered and her impairments do not meet duration. The clinical impression is that 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 which meets duration. In addition, claimant's impairments have improved since she had bypass surgery and the medical report in the file indicates that claimant should be able to work an 8-hour day.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations. Claimant did testify on the record that she has no mental limitations except that she is somewhat forgetful. 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. Claimant's past relevant work was light work as she was a business representative for a janitor's union. There is insufficient objective medical evidence contained in the file 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, if claimant had not been declared disqualified from receiving disability in the first four steps, 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 does retain bilateral manual hand dexterity. 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 did testify that she does cook every 3 days and cooks things like bacon and hamburgers and she grocery shops one month but she does need some help with picking up groceries. Claimant testified she does use a Swiffer and do the dishes. Claimant testified she can stand for a half an hour to an hour, sit for an hour at a time, and walk about a block. Claimant testified she can't squat but she can bend at the waist but sometimes she's short of breath. Claimant testified that she is able to shower and dress herself, tie her shoes, and can touch her

toes while sitting. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 7 and with medication is a 1. Claimant testified that her hands and arms are fine, her knees get stiff, and her feet hurt. Claimant testified the heaviest weight she can carry is 5 pounds.

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.

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 claimant's impairments do not meet duration. 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: March 3, 2010

Date Mailed: March 3, 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/vmc

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