

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: 2010-1768

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 24, 2009

Kalamazoo 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 24, 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 July 2, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

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

(3) On August 5, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 27, 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 in its analysis and recommendation: Based upon the medical evidence that is in the file, the claimant would retain the ability to perform a wide variety of light, exertional tasks of a simple and repetitive nature. Overall condition is primarily of a psychiatric nature and the documentation shows it is being medically managed at this point. Physical conditions aside from Chiari malformation have been acute in nature. This application is denied as the claimant retains the ability to perform light, exertional tasks of a simple and repetitive nature. The claimant has less than a high school education and no history of gainful employment. Vocational Rule 202.17 is being used as a guide for this denial. This denial applies to Medicaid-P, retroactive Medicaid-P and State Disability Assistance. Listings 1.02, 11.03, 11.19, 12.04, and 12.06 were considered in this decision.

(6) Claimant is a 29-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 133 pounds. Claimant attended the 9th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked 2005 at [REDACTED] as a cashier. Claimant also worked for her mother for approximately 10 years cleaning houses and since 2005 forward she has been supported by her boyfriend.

(8) Claimant alleges as disabling impairments: headaches, Chiari malformation, depression, anxiety, panic disorder, interstitial cystitis, tendonitis in both shoulders, asthma, irritable bowel syndrome, a split personality, urination incontinence, and migraines.

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] claimant weighed 143 pounds. Her temperature was 98.5, pulse was 72, blood pressure was 108/72, and respiratory rate was 12. Pain level was a 10 on a scale from 1 to 10. HEENT: Her head was normocephalic and atraumatic. Eyes: Pupils were equal, round, and reactive to light and accommodation. EOMS was intact. Conjunctivae were not injected. Sclerae were not icteric. Fundi: No AV nicking, hemorrhages or exudates. Lungs were clear to auscultation bilaterally. No wheezes, rhonchi, crackles, or distress. Heart: S1 and S2 were normal, regular rate and rhythm, no murmurs, gallops, or rubs. Extremities: Her left shoulder hurt with movement. She had normal DTRS and good capillary refill and pulses.

An MRI of the brain dated [REDACTED] indicates that the ventricles were symmetric. Cerebellar tonsils were again seen to extend 7 mm below the level of foramen magnum compatible with Chiari I malformation and unchanged. There was no evidence of mass, mass effect, midline shift, extraaxial fluid collection, or intracranial hemorrhage. There were no areas of decreased diffusion. There was no MR evidence of acute ischemia. The visualized paranasal sinuses were essentially clear. The orbits were grossly unremarkable. The calvarial marrow was normal in signal intensity. (p. 67)

A thyroid uptake scan was conducted on [REDACTED] which indicated low 24-hour thyroid uptake consistent with hypothyroidism. There was no evidence of thyroid nodules. (p. 68) A gallbladder ultrasound done [REDACTED] showed the liver was normal size and echotexture were visualized. Gallbladder was somewhat contracted but there were no stones, no pericholecystic fluid. In the common bile duct there was no biliary dilatation. The common duct measured 3.3 mm. The pancreas was normal in size and configuration. (p. 9) A CT examination

of the abdomen and pelvis was done based upon abdominal pain. She had normal appearance of the lung bases, liver, gallbladder, spleen, pancreas, adrenals, kidneys, and retroperitoneum. No evidence of lymphadenopathy. In the pelvis there was no abnormal mass or fluid collection. The uterus was surgically absent with a normal appearing appendix. There was excellent bowel opacification. No bowel or bone abnormality detected. (p. 71) The claimant had a vaginal diagnostic thinprep pap which was negative for intraepithelial lesion or malignancy.

(p. 77)

On [REDACTED], claimant had a sprained wrist and foot which she got from fighting with her fiancé. She was alert and oriented with some pain in her wrist and her wrist was wrapped and her foot was wrapped and she on crutches. Her hygiene was good and her eye contact was good. Her short-term and long-term memory was intact. Speech was articulate and appropriate. Mood was described as more angry, off her meds. Affect was pleasant and cooperative. Thought processes were clear, logical, and coherent. No auditory or visual hallucinations. Insight and judgment were stable but limited. Impulsivity was moderate given the history of violence. She had major depressive disorder with psychotic features. (p. 132A)

On [REDACTED], claimant stated that she stopped taking all of her medications because she started school and she didn't want to be a zombie. She presented for her mental health examination appointment and her case was closed because management was no longer needed. She was causally dressed and was accompanied by a gentleman. She was alert, calm, and euthymic. Her thoughts were clear and organized. She was articulate.

On [REDACTED], a psychiatric evaluation indicated that claimant has had problems with marijuana use and alcohol dependence and has three DUIs and has experienced command hallucinations and panic symptoms. She was found to be an overweight young woman who was

casually dressed with adequate grooming. She was pleasant and cooperative. She exhibited some mild psychomotor retardation. Speech was normal in rate and volume. Mood was irritable. Affect was blunted. She had been endorsing auditory hallucinations which were sometimes command. No delusional thinking. She did seem to have a tendency toward disassociation. Thoughts were expressed logically, coherently, and in a goal-directed manner. Cognitively she was able to recall 3 of 3 objects after 5 minutes, the third object required queuing. She was able to name the months of the year backward without difficulty and the current and previous president of the United States. The grass is greener proverb was interpreted as other people have a lot more hopes than I. Insight appeared to be fairly good and judgment was fair. She was diagnosed with major depressive disorder, recurrent with severe psychotic features and alcohol dependence in full sustained remission. (p. 154A)

A physical examination conducted [REDACTED] indicated that claimant was 174 pounds and her blood pressure was 124/72. Her pulse was 92. Heart had regular rhythm without murmur. Neurological examination showed the pupils were equal and reactive to light. The optic disc was sharp. Visual fields were full to confrontation. Extraocular movements were full. Facial movement was symmetric. There was no pronator drift. She had normal power in all four extremities. Sensation to pinprick was intact and symmetric in the hands and feet. Reflexes were symmetric with downgoing toes. There was no tremor or ataxia on finger-to-nose testing. She had normal casual gait. Her head MRA performed [REDACTED] included head MRA, neck MRA, and brain MRI were unremarkable except for some borderline mild Chiari I malformation. The impression was post-traumatic migraines improved with Calan. (p. 508)

A neurological examination conducted [REDACTED] indicates that laboratory testing prior to the lumbar puncture showed she had a platelet count of 289,000, a PTT of 28, and an INR of 0.9. All studies were within normal range. (p. 44)

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. There are no laboratory or x-ray findings indicating that claimant has a severe physical impairment. Claimant does not allege a severe physical impairment. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant testified on the record that she can stand for 1-2 hours at a time and sit for an hour at a time. Claimant testified she can walk 1/8 of a mile and is able to squat, bend at the waist, shower and dress herself, tie her shoes, and touch her toes. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 7/8 and with medication is a 2/3. Claimant testified that she is right-handed and her hands and arms are fine and her legs and feet are fine. Claimant testified that she can lift 50 pounds and can carry 20 pounds repetitively. Claimant testified that she does smoke one pack of cigarettes every three days and her doctor has told her to quit but she's not in a smoking cessation program. 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 testified that she has headaches, Chiari malfunction, depression, anxiety, and a panic disorder.

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 mental limitations resulting from her reportedly depressed or anxious state. The mental functional capacity assessment in the record indicates that claimant was oriented to time, person, and place and was functional in her day-to-day life. In fact, 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. 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. In addition, based upon claimant's medical reports, it is documented that claimant had alcohol abuse as well as substance abuse which would have contributed to physical and any alleged mental problems in the past.

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 at [REDACTED] as a cashier and cleaning houses which was light work. There is insufficient objective medical 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 is also not in compliance with her treatment program as she does continue to smoke cigarettes even though her doctor has told her to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Under the Medical-Vocational guidelines, a younger individual (age 29), with a less than 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/ _____
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

cc:

