

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: 2010-29743
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 2010
Genesee 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 May 6, 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)?

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 February 2, 2010, claimant filed an application for Medical Assistance benefits alleging disability.
- (2) On March 9, 2010, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.

(3) On March 12, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On March 29, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 16, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work that avoids the use of ladders, ropes, scaffolding or exposure to unprotected heights and dangerous machinery. Claimant also has visual limitations to depth perception and accommodation, requires the use of assistive device, and is limited to performing tasks of a simple and repetitive nature which limits her exposure to supervisors, co-workers and the general public. Vocation Rule 202.13 was used as a guide.

(6) Claimant is a 51 year old woman whose birthday is November 28, 1958. Claimant is 4'8" tall and weighs 130 pounds. Claimant completed 10th grade and has no GED, and can write, do some basic math, but has problems comprehending reading materials.

(7) Claimant has had a number of short terms jobs from which she was let go and told she was too slow. Claimant last worked 4 years ago in a factory, job that lasted her 5 months. Claimant currently lives in a shelter, has no driver's license due to a 2001 DUI, and receives food stamps.

(8) Claimant alleges as disabling impairments: bipolar disorder, PTSD, depression, loss of vision in her left eye in 2001 after being stabbed by a neighbor, and shattered heel in her right foot due to falling from a 2nd story window several years ago.

(9) Claimant has applied for Social Security disability and been denied, and is appealing 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).

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 approximately 2006. Therefore, claimant is not disqualified from receiving disability at Step 1. dependence.

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 a duration of at least 12 months.

Claimant's medical record includes a Medical Examination Report of February 22, 2010 listing as claimant's current diagnosis cataract, right heel fracture and bipolar disorder. All of claimant's examination areas are listed as normal except for the right heel fracture and bipolar disorder. Claimant's condition is stable but she is limited in lifting/carrying up to 10 lbs. frequently. Claimant can use both of her hands/arms for repetitive actions, but can only operate

foot/leg controls with her left foot/leg. Claimant has mental limitation in social interaction, but can meet her needs in the home without assistance.

Eye Examination Report for October 5, 2009 exam states that the claimant is partially blind in left eye.

X-ray of claimant's right foot of December 10, 2009 shows osteopenia of the bones of the right foot, slight flattening of the plantar arch suggestive of flat foot, intact osseous structures, mild degenerative changes, and intact soft tissue outlines.

[REDACTED] medical evaluation cites the claimant's chief complaints as depression, auditory hallucinations, bipolar, schizophrenia, post-traumatic stress disorder, and problems with her right foot. Claimant reported working on and off in factories over the years, with last job being in 2007. Claimant has seen many psychiatrists throughout her lifetime and currently was seeing a psychiatrist on a weekly basis. Claimant was taking Remeron and Abilify, former to diminish the hallucinations, but has been out of both for several days.

Claimant fell attempting to climb in an open window of her apartment 6 years ago and landed on her right ankle and heel, and apparently there was a degree of compression fracture. No surgery was performed and claimant has difficulty walking more than 5-10 minutes because of the pain. Claimant uses cane for stability and is essentially unable to stand on the right leg. Claimant was also stabbed in the left eye and currently uses five different eye drops. Claimant had a cataract repaired in that eye in July, 2009, is currently wearing an eye patch, and her physicians are talking about additional surgery.

Claimant was a well-developed, overweight female in obvious distress with her cane, her eye patch, and her right ankle pain. She was alert, cooperative in answering questions and

following requests, and well-oriented. Claimant's affect, dress and effort were all appropriate, and her immediate, recent and remote memory was intact with normal concentration. Claimant's insight and judgment were both appropriate. Right eye visual acuity was 20/40. Claimant's examination areas were all normal with the exception of inability to heel and toe walk, mild difficulty squatting and arising, and inability to hop. Range of motion was impaired in the dorsolumbar spine and in plantar flexion of the right ankle. Claimant walked with a moderate right-sided limp without the use of an assistive device.

Evaluation conclusion is that of psychiatric problems, right heel/ankle fracture causing prominent right-sided limp and inability to stand on the right foot because of the reported pain, and impaired range of motion of that ankle.

[REDACTED] scheduled by [REDACTED] quotes the claimant as citing troubled life with many legal problems including drinking and driving, frequenting a drug house, and assault and batter conviction. Claimant also reported a history of cocaine abuse but claimed she quit using couple of years ago, even though she reported being in a 28 day rehab in February, 2009. Examiner's impression is that the claimant was under-representing her abilities and exaggerating symptoms during the exam, and that her mental abilities to understand, remember and carry out instructions are mildly impaired. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace are moderately impaired. Overall, it is the examiner's impression and all the information available at the time that the claimant's psychological condition would moderately impair her ability to perform work related activities. Claimant's diagnoses is that of mood disorder NOS, cocaine dependence reportedly in full

sustained remission, history of alcohol abuse, borderline intellectual functioning (previous testing), personality disorder NOS, and current GAF of 55.

██ completed on ████████████████████ indicates that the claimant has completed 12th grade at ████████████████████ and began cosmetology on October 15, 2009.

At Step 2, claimant has established that she does have a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more.

At Step 3, claimant's impairments do not rise to the level necessary to specifically listed as disabling as a matter of law.

At Step 4, claimant was performing factory work up to 4 years ago, after she was blinded in her eye and after she injured her foot in a fall. Claimant's medical exam does describe her as being unable to stand on her foot and as having difficulty with movements due to the foot injury. Claimant testified that she was let go from her jobs due to being too slow. The Administrative Law Judge finds that claimant has established that she can probably no longer perform any of her prior work since factory jobs usually require extensive standing and walking. Claimant therefore would not be disqualified 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 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).

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 some other less strenuous tasks than in her prior employment or that she is physically unable to do light tasks if demanded of her. Claimant managed to complete 12th grade and was taking cosmetology classes as of October, 2009. Claimant has failed to provide the necessary objective medical evidence 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.

It is also noted that claimant's testimony and the information contained in the file indicate that claimant has a long history of alcohol and drug abuse. Claimant has given different accounts as to when she last abused alcohol and drugs, so some question exists as to whether she is indeed no longer using either substances. Such use would complicate a conclusion that the claimant has serious mental issues that prevent her from being employed.

Claimant also testified at the hearing and reported to examiners that she is in constant, daily pain in her foot and heel. Claimant however has repeatedly reported that she takes no pain medication, and is apparently able to function without it. 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 even with her impairments. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is 51), with a

high school education and a history of unskilled work who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

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 benefits. The claimant should be able to perform a wide range of sedentary and light work even with her 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 15, 2010

Date Mailed: June 16, 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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