

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-35827
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 28, 2010
Wayne County DHS (18)

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 September 28, 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 January 8, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 28, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On May 3, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On May 13, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 26, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR

416.968(a) pursuant to Medical Vocational Rule 203.15 and stated in its comments 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 on Vocational Rule will be used.

- (6) Claimant is a 56-year-old woman whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 260 pounds. Claimant is a high school graduate and has 2 years of business school and is able to read and write and does have basic math skills.
- (7) Claimant last worked September 2005, for the [REDACTED] where she worked as a lead clerical worker for 10 years before she left with mental issues. Claimant also worked for Unemployment Compensation for an additional 2 years.
- (8) Claimant alleges as disabling impairments: hypertension, depression, corneal dystrophy, and blindness in the left eye, panic disorder, and anxiety.

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

The objective medical evidence on the record indicates that claimant testified on the record that she lives alone in a mobile home and her sister and daughter support her. Claimant testified that she is widowed and she has no children under 18 who live with her and does not have any income. Claimant testified that she receives Food Assistance program benefits and the Adult Medical Program and she has a driver's license and drives 2 times per week. Claimant testified that she cooks one time per day and cooks things in the microwave and she grocery shops one time per month and uses the riding cart to get around. Claimant testified that she does vacuum, do the dishes and do laundry and she watches TV about 2 hours per day. Claimant testified that she can stand for 10 minutes, sit for 30 minutes at a time. Claimant testified that she can walk 100 feet and cannot squat but she is able to bend at the waist, shower and dress herself, tie her shoes and touch her toes. Claimant testified that her back and knees are fine and she is right handed and she has carpal tunnel syndrome in her hands and arms and she pain in her feet and legs. Claimant testified that the heaviest weight that she can carry is 15 pounds and she does smoke 10 cigarettes per day and her doctor has told her to quit. Claimant testified that on a typical day she wakes up, uses the bathroom, fixes coffee, fixes toast, watches TV, takes the dog out and works on the computer.

An April 7, 2010, [REDACTED] medical examination report indicates that on physical examination she was well-developed, well-nourished, cooperative and in no acute distress. The examinee was awake, alert, and oriented x3. The examinee was dressed appropriately and answered questions fairly well. In the vital signs her height was 5'10", weight 216 pounds, pulse was 78, respiratory rate was 16. Blood pressure was 170/100 and 140/90. Visual acuity without glasses was 20/50 on the right and 20/blind on the left, but she can see some light and images. HEENT was normocephalic. In the eyes, the lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema, or exudates noted. The examinee can see some light and

images out of her left eye. PERRLA, extraocular movements intact. Ears: no discharge in the external auditory canals. No bulging erythema, perforation of the visible tympanic membrane noted. The nose, there is septal deformity, epistaxis or rhinorrhea. In the mouth, the teeth are in fair repair. The neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid is not visible or palpable. ENT, the external inspection of the ears and nose reveal no evidence of acute abnormalities. The chest is equal to expansion. The lung fields are clear to auscultation and percussion bilaterally. There are no rales, rhonchi, or wheezes noted. No retractions noted. No accessory muscle usage noted. No cyanosis noted. There is no cough. Normal sinus rhythm S1 and S2, no rubs, murmur or gallop. Gastrointestinal area was soft, benign and non-distended. Non-tender with no guarding, rebound, palpable masses. Bowel sounds are present. Liver and spleen are not palpable. On the skin, there is no significant skin rashes or ulcers. In the extremities, there are no obvious spinal deformity, swelling, muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement is noted. In the bones and joints the examinee does not use a cane or aide for walking. Able to get on and off the table without difficulty. Gait and stance are normal. Tandem walks, heel walk and toe walk are done without difficulty. Able to squat to 60% of the distance and recover and bend to 60% of the distance and recover. Grip strength see Jamar. The examinee is right handed. Gross and fine dexterity appear bilaterally intact. Abduction of the shoulders is 0-150 degrees. Flexion of the knees is 0-150. Straight leg raising while lying 0-50 and while sitting 0-90. In the neurological area, in general the patient was alert, awake and oriented to person, place and time. Cranial nerve II vision and stated vital signs, III, IV and VI no ptosis and nystagmus. PERRLA pupils 2 millimeters bilaterally. In V, no facial numbness. Symmetrical response to stimuli. VII: symmetrical facial movements noted. VIII, can hear normal conversation and whispered voices. VIII and X, swelling intact, gag reflex intact uvula midline. XI, head and shoulder movement against resistance are equal. XII, no sign of tongue atrophy. No deviation with protrusion of tongue. Sensory functions were intact to sharp and dull gross testing. Motor exam reveals spare muscle tone without flaccidity, spasticity or paralysis. The impression was hypertension, a corneal dystrophy with decreased vision in the left eye and mental illness (pp. 4-5).

An April 7, 2010, psychiatric report indicates that the claimant came to the appointment by herself. She said her sister drove her to the appointment. She is 5'10" tall and weighed 316 pounds. Hygiene and grooming were fair. She had some trouble remembering things. She was punctual to the appointment. The claimant was in contact with reality. She had low self-esteem. Some psychomotor retardation was present. She seemed to be motivated to get better. There does not seem to be a tendency to exaggerate symptoms because she has insight into her problems. The stream of mental activity was spontaneous, logical and goal directed. No looseness of association or flight of ideas noted. The claimant denied any auditory or visual hallucinations or any paranoid delusions. She denied any homicidal or suicidal ideations. The claimant described her mood as being anxious and depressed. Her affect was constricted. The claimant was oriented to time, person and place. She was

able to state today's date as April 7, 2010, and the place as the clinic. In her immediate memory she was able to recall 3 digits forward and 3 digits backward. In her recent memory she was able to recall 3-3 objects immediately and after 3 minutes 2-3. When asked to name the past few presidents she said Obama. When asked her date of birth she was able to state that it was [REDACTED]. The claimant was able to name 5 large cities, and current famous people and events with no problems. She was able to subtract 7's from 100 and said 93, 86, 79. She was unable to multiply single digits. When asked about the grass is greener on the other side of the fence she stated it's just green. When asked about what is in common between a bush and a tree she stated that they both have leaves. When asked what she would do if she found a stamped addressed envelope, she stated that she would put it in a mailbox. She denied any head injuries or seizures, and was diagnosed with dysthymia and a GAF of 40 and her prognosis was fair to guarded and she would be able to manage her own benefit funds (pp. 16-17).

There is a residual functional capacity assessment in the record filled out March 8, 2010, by a [REDACTED] which indicates that claimant was markedly limited in almost all areas and moderately limited in all other areas (pp. 46-47).

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 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 and 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 he 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 he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he 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 he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he 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 he 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 he 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 he 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 he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

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 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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.

Landis

/s/

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

Date Signed: November 8, 2010

Date Mailed: November 9, 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/alc

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