

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

IN THE MATTER OF:



Reg. No: 2010-37767
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 17, 2010
Gratiot 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 August 17, 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 22, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On April 29, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On May 4, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On May 27, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 15, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other

work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.21.

- (6) Claimant is a 49-year-old woman whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 189 pounds. Claimant recently lost 53 pounds. Claimant attended the 12th grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in 1997 with a temporary service doing manufacturing jobs. Claimant has also worked as a clerk at [REDACTED] and from 1997 – 2009 was receiving SSI and her SSI was cancelled September 1, 2009, by the Social Security Administration.
- (8) Claimant alleges as disabling impairments: Colitis, depressions, seizures, neck and back pain, ligament damage, degenerative bone disease, broken collar bone in 1995, congestive heart failure in 1982, enlarged heart, twisted spine, twisted right side, pinched nerve in the neck and shoulder, seizures, and depression.

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 1997. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates claimant testified on the record that she lives with her mother in an apartment and she is divorced with no children under 18. Claimant has no income and receives Food Assistance Program benefits. Claimant does have a driver's license but she usually takes the transit system or a friend takes her where she needs to go. Claimant does cook 2 times per week and cooks things in the microwave and cooks things like entrees and eggs. Claimant does grocery shop 2 times per month and can carry 1-2 bags on her own. Claimant doesn't clean the house, the living center comes and cleans. Claimant watches TV from 2-3 minutes at a time. Claimant testified that she can stand for 15 minutes, sit for 4 hours on a good day and on a bad day 1 hour. She can walk a mile and a half. Claimant cannot squat but she can bend at the waist and touch her toes but not tie her shoes, and she can shower and dress herself. Claimant testified that her level of pain on a scale from 1-10 without medication on a good day is a 5 and on a bad day is an 8-9. With medication her pain is a 3-4 on a good day. Claimant is right handed and has problems with her right side because she can't lift her arm over her head or do her hair. Claimant thinks she has blood clots in her legs and feet. Claimant testified that the heaviest weight that she could carry is a gallon of milk or her portable oxygen tank on her left side. Claimant does smoke a pack of cigarettes per day and the doctors have told her to quit and she is not in a smoking cessation program but she has cut down from 2 packs per day. Claimant testified that she occasionally drinks wine and has never taken illicit drugs. Claimant testified that in a typical day she worries and gets up and checks for her doctors appointments, opens the door, does light dishes, pays bills, heats up food, sits down and lies back down, rests, and tries to get her papers together, because she has \$46000 in medical bills. Claimant testified that she was in the hospital in April 2010, for blood clots and in March 2010, for blood clots. Claimant also testified that she has an enlarged liver and need vitamin B12.

A physical examination dated February 2, 2010, indicates that the claimant has a brace over her right wrist. She is cooperative in answering questions and following commands. Her immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provides a good effort during the examination. Vital signs: blood pressure on the left arm was 130/84, the pulse was 80 and regular, respiratory rate was 16. Weight was 201 pounds. Height is 67" without shoes. Her skin was normal. Eyes and ears: the visual acuity in the right eye was 20/25 and in the left eye was 20/30 without corrective lenses. Pupils are equal, round and reactive to light. The claimant can hear conversational speech without limitations or aid. The neck was supple without masses. The chest: the breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. The heart: regular rate and rhythm without enlargement. There is a normal S1 and S2. In the abdomen, there was no organomegaly or masses. Bowel sounds were normal. In the vascular system, there was no clubbing or cyanosis appreciated. There is no edema present. The peripheral pulses are intact. In the musculoskeletal area, there is no evidence of joint laxity, crepitation or effusion. Grip is diminished on the right and remains intact on the left. Dexterity is impaired on the right. The claimant could pick up a coin, and open a door. She could button clothing with the left hand only. There is tenderness over the insertion of her right biceps tendon. There is a superiorly displaced clavicle at the right shoulder. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty performing a partial squat and not difficulty standing on either foot. Straight leg raise is negative. There is no paravertebral muscle spasm. Range of motion for all extremities was normal except for the right shoulder forward elevation was 60 degrees and internal external rotation was 40 degrees (pp. 316-317). Neurological nerves were intact. Motor strength is diminished to 4/5 at the right upper extremity. Muscle tone is normal. Sensory is intact to light touch and pinprick. Reflexes are intact and symmetrical. Romberg testing is negative. The claimant walks with a normal gait without the use of an assist device (p. 318).

Claimant has some right arm pain which appears to be due to the clavicular dislocation. She does have associated weakness on the right side. She did have diminished range of motion in her neck as well. She did have difficulty doing manipulative tasks especially with the right arm. Unfortunately her long term prognosis does appear to be guarded to poor. Surgical intervention to the right clavicle may be upheld (p. 319).

A February 2, 2010, radiology report of the right shoulder indicates no acute traumatic or intrinsic osseous abnormalities. The joint space is well maintained without discernable spurring, eburnation or erosive change along opposing surfaces. The doctor could not identify the joint effusion or loose body. Surrounding soft tissues are intact (p. 320).

A psychological report dated November 24, 2009, indicates that claimant was oriented to time, person and place and had good immediate memory, recent memory she repeated apple, chair, and car. Recall for 3 minutes, she stated she could only think of chair. The past presidents were Barack Obama, George Bush, and if you got to know

and before him Clinton. Information: she named 5 large cities; Detroit, Chicago, Atlanta, Houston, Seattle, Buffalo. 2 Famous people, Martin Luther King, you didn't say the y had to be alive and Rosa Parks. Things that have been in the news recently was the S1N1, that flu and I guess the economy. In calculations, she stated 93,86, 78, 71 that's about it. $4+5=9$, $18+5=23$, $8-2=6$, $23-6=18$, $2*2=4$, $18*3=forget\ it$, I need a calculator, $10/2=5$, $48/8=6$. Abstract thinking: the grass is greener proverb "wow, to me I think it means what you see is not always what it is". The proverb don't focus on yesterday but think about today, she stated it was easier said than done. Similarities, a bush and a tree were alike because birds rest on them and they are different because of the size. An orange and a banana are alike because they both peel, and they are different because of the taste. Judgment: what she would do if she found an envelope on the street that was addressed, sealed and had a new stamp, she would mail it. If she saw a fire in a theatre, she would find someone with authority to deal with, she would say look instead of fire (p. 326). Her diagnosis was major depression. Her current GAF was 49, her prognosis was fair and could be improved with effective psychotherapy. She should be able to manage her own funds.

A medical source statement in the case states, that based upon the examination, she would be able to understand simple and moderately complex instructions. She was able to acquire new learning at a level that's reserved for routine unskilled employment. She had sufficient attention skills to complete work tasks. Her interaction with others is expected to be good and she had sufficient social skills and personal boundaries for work relationships and understands authoritative hierarchy. She is sensitive to criticism and observation, however, this sensitivity is sufficient to push her beyond her usual stress tolerance levels. Easily escalated to verbal expressions and frustration and anger, even to the point of agitation described in the additional review date. She is able to satisfy emotional needs with only a combination of external support for others who care for her, mobilization of her own internal resources and a belief system that allows powerful spirits to be looking out for her. Cognition is adequate for work and she appears to have sufficient judgment, decision making, and problem skills for general employment. She has adequate safety awareness for a work environment and can express to exercise this in regard to her physical well being. She logically proceeds herself to be fragile. In my judgment her interpersonal skills are comprised enough by depression to make potential employment precarious (pp. 327-328).

This Administrative Law Judge did consider all of the 315 pages of medical information contained in the file in making this determination.

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.

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 no 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: September 1, 2010

Date Mailed: September 2, 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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