

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: 2010-3906

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 15, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on December 15, 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 February 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 21, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work and that her impairments were non-exertional.

(3) On June 12, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 19, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 3, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: While there is evidence of degenerative disc disease there is no evidence that this condition will significantly impair the claimant. There is no evidence of any limiting factors related to the psychiatric condition investigated by the Social Security Administration. Physically given the level of involvement it is reasonable to assume that light exertional limitations are appropriate. This application is denied to past relevant work as claimant retains the ability to perform light exertional tasks without any psychiatric limitations. This denial applies to MA-P, retroactive MA-P and State Disability Assistance. Listings 1.04, 11.14 and 12.04 were considered in this decision.

(6) The hearing was held on December 15, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on January 4, 2010.

(8) On January 6, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendations: The medical evidence does not materially alter the previous determination. The new information states that the claimant has finally assented to receive epidural steroid injections and there is a further medical source

opinion that claimant is capable of performing past work. There is no additional evidence related to the non-severe psychiatric condition the Social Security Administration investigated. The claimant retains the physical residual functional capacity to perform light exertional work; there are no psychiatric limitations. The claimant's past work was light and skilled. Therefore, the claimant retains the capacity to perform her past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. State Disability Assistance is denied per PEM 261 due to the capacity to perform past relevant work. Listings 1.02/03/04, 11.14 and 12.04 were considered in this determination.

(9) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 210 pounds. Claimant attended the eleventh grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked March 31, 2008 as a patrol officer for [REDACTED]. Claimant has also worked in retail, as a pharmacy assistant and as an office clerical worker.

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 does 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 March 31, 2008 since she's been on medical leave. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an MRI on the lumbar spine done on [REDACTED] at the L2-L3 level showed that claimant had mild to moderate facet arthropathy resulting in mild inferior foraminal narrowing with nerve root compression; at L3-L4 with moderate facet arthropathy, left greater than the right resulting in indentation of the thecal sac and borderline mild central canal stenosis and mild left neuroforaminal narrowing without nerve root compression; at L4-L5 she had moderate facet arthropathy resulting in indentation of the thecal sac with borderline central canal stenosis and mild bilateral foraminal narrowing without nerve root compression. The impression was left lumbar radiculitis and lumbar stenosis. She was prescribed Vicodin to take for the pain and a lumber epidural steroid injection. (pp. 1-2 of the new information)

A physical examination conducted [REDACTED] indicates that her blood pressure was 127/96, her pulse was 92, her respiratory rate was 18, temperature was 36.7 and her pulse oximetry was 98% on room air. She was 5'11" tall and weighed 205 pounds. The claimant was alert and oriented x3, pleasant and cooperative, in mid-to-moderate distress secondary to her back pain. HEENT: pupils are equal, round and reactive to light. Extraocular movements were

intact. Sclerae were nonicteric. Conjunctivae were pink. Mucosa was moist. No oral lesions. No gross hearing deficits. Neck was supple. No JVD. No lymphadenopathy. No bruits. No thyromegaly. Full range of motion. No thrills, rubs, or heaves. Lungs were clear to auscultation. No rales, wheeze or rhonchi. No E to A changes. No accessory muscle usage. Abdomen was soft and nontender. Positive bowel sounds. No renal or aortic bruits were appreciated on auscultation. Extremities showed no lower extremity edema, cyanosis or clubbing. She had 2/2 radial and pedal pulses. Movement of all four extremities. Musculoskeletal had no tenderness to palpation along the cervical, thoracic, or lumbar spine. She did have full range of motion of the cervical and thoracolumbar spine; however, she did have some mild pain with her thoracolumbar flexion. There was no increased paraspinal musculature. She had mild SI tenderness on the left. Negative facet loading. Positive Patrick on the left and positive straight leg on the left at approximately 50 degrees with pain reproduced in the left buttocks and leg. Neurologic, cranial nerves II-XII are grossly intact. Strength was 5/5 in upper extremities bilaterally, proximal and distal. She was 5/5 right lower extremity proximal and distal; her left lower extremities, she was 4/5 proximal and distal, limited secondary to stiffness and pain. Sensation was intact, grossly to touch in all dermatomes in all four extremities. DTR's, she was 2/4 in all four extremities with negative Babinski. Skin, there was no gross alterations or rashes. In psychiatric, she was pleasant and cooperative at the time of the examination. (pp. 4-5 of the new information)

Claimant received a lumbar steroid injection on [REDACTED] and tolerated the procedure well without any complications. [REDACTED] electro diagnostic testing indicates an EMG and nerve conduction velocity study was performed on [REDACTED] revealing there was no EMG evidence of left lumbosacral radiculopathy. (p. 8 of the new information)

Orthopedic evaluation of the lumbosacral spine was performed on [REDACTED] and the doctor determined that it was difficult for him to correlate complaints of left extensor hallucis longus and dorsiflexor weakness based on review of previous records. The MRI examination did reveal generalized degenerative disc disease of the lumbosacral spine, but there was an absence of lumbosacral radiculopathy. The determination was that her condition was primarily of a chronic, preexisting degenerative nature and not a specific result of a single incident. Her functional capacities should be what they were prior to [REDACTED] and her activities that involve extreme bending, especially associated with heavy lifting could exacerbate symptomology associated with her underlying condition. (p. 9 of the new information)

On [REDACTED] examination indicates that claimant was oriented to person, place and time. She was able to repeat 6 numbers forward and 4 backward. The claimant recalled two of three items three minutes later. She named Barack Obama as the current president, George Bush as the past president and reported her birthday correctly. She listed Los Angeles, Chicago, Detroit, Dayton and Louisiana when asked to 5 large cities. News events include the American Idol, Dancing with the Stars, and Barack Obama. She was able to subtract 7's from 100 and perform simple 1-digit math calculations. She said the "grass is greener" means things may viewed different by people and that "spilled milk" means you can't get upset about situations your facing. In similarities and differences, the claimant noted that the tree and a bush have limbs and are green and the difference is that the tree is taller. In judgment she indicated she would mail the letter and go tell someone that could help people evacuate in the event of a fire, and her future plans involve going back to school. She was diagnosed with depressive disorder NOS, back and leg pain, health and employment issues with a GAF of 55 and her prognosis was guarded. Based upon the examination, it was felt that she

was able to understand, retain and follow simple instructions and perform basic routine and tangible tasks. Her ability to interact with co-workers, supervisors and the public appears adequate. (pp. 28-29) She was believed to be able to manage her benefit funds independently.

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 clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in her back and in multiple areas of her body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The medical source opinion indicates that claimant should be able to perform at least light or medium work and should avoid heavy lifting which would or may exacerbate her symptoms. The doctor did not give her any physical limitations. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant has a lumbar strain or sprain. The statement by claimant that she experiences severe pain in her muscular and the statement that she does have some lumbar radiculitis is the only support given for the extreme physical limitations, which claimant have stated she has. Claimant testified on the record that she can walk 3 blocks, stand for 20 minutes, sit for an hour but cannot touch her toes. Claimant testified that she can shower and dress herself, can carry 15 pounds, she is right-handed and her hands and arms are fine. Claimant testified that her pain on a scale from 1 to 10 with no medication is a 8/10 and with medication is a 5. Claimant testified that she can bend at the waist to the knees and that she cannot touch her toes. Claimant testified that she needs epidural shots and physical therapy but she does not have insurance.

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 records are insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant testified on the record that she does have 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 mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. Claimant's past relevant work was light as a police officer. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform her prior work which she has performed for the past 22 years. 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. Claimant testified that she has worked in retail, as a pharmacy assistant, and as office clerical.

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 testified on the record that she lives with her son in a house and that she is single with no children under the age of 18. Claimant testified that she does have a driver's license and drives to the store daily and the farthest she has to drive is 5-10 miles. Claimant testified that she does cook 1-2 times per week and cooks breakfast, sandwiches and microwave dishes. Claimant testified that she does make her bed, wash the sink, dust, wipe tables and she used to go to the doctor one time per month but now she is out of money. Claimant has failed to provide the necessary objective medical evidence to establish 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. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

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. This Administrative Law Judge finds that claimant was oriented to time, person and place during the hearing and was able to answer all of the questions at the hearing and was responsive to the questions. Therefore, claimant has not established that she is disabled based upon a mental impairment. Claimant did testify that she does receive some relief from her pain medication.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her impairments.

The 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 30, 2010

Date Mailed: March 30, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

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