

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-40274
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 2010
Delta 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 5, 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 February 24, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 21, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On April 21, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On June 16, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 6, 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) pursuant to Medical Vocational Rule, 202.20.

- (6) The hearing was held on August 5, 2010. 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 September 20, 2010.
- (8) On October 12, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: the objective medical evidence presented does not establish a disability of listing or equivalence level. The claimant retains the residual functional capacity to perform at least light unskilled work per the provisions of 20 CFR 416.967(b) and 20 CFR 416.967(a) and used the Vocational Rule 202.13 as a guide.
- (9) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5'5" tall and weighs 172 pounds. Claimant is a high school graduate and has been a licensed [REDACTED] for 30 years. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked December 25, 2009, in an assisted living facility as a personal care aide where she worked for 8 years. Claimant was a stay at home mom from 1982-1994 and she worked as a hair dresser from 1976-1982.
- (11) Claimant alleges as disabling impairments: breast cancer in remission, back problems and surgery 2 years ago, heart palpitations, 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 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates claimant is divorced and lives with her son in a home. Claimant has no children under 18 and has no income. Claimant has a driver's license and does drive daily to town about 22 miles. Claimant does cook everyday and cooks filled meals like meat, potatoes, pasta and vegetables. Claimant does grocery shop one time per week with no help, but she does need help carrying the bags in. Claimant testified that she does dishes, cooks, does laundry with help. Claimant testified that she watches TV 2 hours per day and she likes to work on ceramics. Claimant testified that she can stand for 5-10 minutes at a time and can sit for 5-10 minutes at a time and she can walk one block. Claimant testified that she cannot squat because of the pain and cannot bend at the waist. Claimant testified that she can shower and dress herself but cannot tie her shoes and cannot touch her toes. Claimant stated that her level of pain on a scale from 1-10 without medication is an 8 and with medication is a 6. Claimant testified that she is right handed and her hands and arms are fine. Claimant testified that she has pain radiating down her left leg and has carpal tunnel syndrome in both hands and has had surgery relief. Claimant testified that the heaviest weight that she can carry is 5 pounds and she doesn't smoke, drink, or do drugs. Claimant testified that in a typical day she watches the news, showers, reads,

walks around, sits, lies down, makes supper and does the dishes. Claimant testified that she had surgery June 2010, and she was in the hospital for 30 days. Claimant was admitted to the hospital July 15, 2008, and discharged July 28, 2010. She had a pseudomeningocele, headache, hypertension, and a history of anxiety and depression. She had a lumbar laminectomy in the early part of July, she was discharged uneventfully but had to come back to the hospital because of severe headaches. She was readmitted and found to have a cerebrospinal fluid leak with a pseudomeningocele beneath her lumbar incision. She was discharged again and a few days after that had some drainage from the incision and once again returned to the hospital where she was admitted. She was kept on bed rest for 10 days and had no significant complications, but did have occasional leg pain on the left side. Her drain was eventually clamped and she tolerated the clamping and the incision remained clean and dry with no evidence of ongoing leakage. She had no issues with reoccurring drainage or headaches. On the morning of discharge she was in excellent spirits dressed in her street clothes sitting at the edge of the bed. She had been up walking in the hallways with the assistance of her wheeled walker (pp. 7, 7c).

An August 17, 2010, progress note indicates that the claimant's blood pressure was 140/80, temperature was 98.6%, pulse 76, respiration 16, pulse oximetry on room air was 99%, she was generally awake, alert female in no acute distress. Skin was pale, warm and dry without atypical rashes, ecchymosis, or other lesions. Eyes show PERRLA, EOMI, sclerae and icteric, conjunctivae pink and moist without exudate. Tympanic membranes are clear with normal landmarks. Ear canals are patent without cerumen. Nares show pink mucosa and no exudate. Oral mucosa is pink and moist. Dentition is in good repair. Posterior pharynx is clear without erythema or exudate. Chest is clear to auscultation bilaterally. Chest while moving is symmetrical with normal excursion. No wheezes, rales, or rhonchi are noted. Heart has regular rate and rhythm. No heaves, thrills, rubs or murmurs are appreciated. No peripheral edema is noted. No carotid bruits are appreciated. Carotid/brachial/femoral/dorsalis pedis pulses 2+ and symmetrical. At that time claimant was given a slip to be off of work for 90 additional days because she had surgical complications and had subsequent deconditioning. Her pain level was approximately 5 out of 10 and she was fatigued and tired but improving slowly (p. 197).

A surgical pathology report dated May 13, 2008, indicated that claimant was diagnosed with left breast mass infiltrating ductal carcinoma with no lymphatic invasion, no vascular invasion and no micro calcifications (p.40).

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 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. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, she would be denied a gain at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant'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. 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. The claimant's testimony as to her limitations indicates that she 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 she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

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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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