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

IN THE MATTER OF:



Reg. No: 2010-54185 Issue No: 2009, 4031 Case No: Load No:

Hearing Date:

November 04, 2010 Livingston County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

## **HEARING DECISION**

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notic e, a telephone hearing was held on November 4, 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 July 14, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On Augus t 20, 2010, the Medica I Rev iew Team denied c laimant's application stating that claimant's impairment's are non-exertional.
- (3) On August 25, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On August 30, 2010, clai mant filed a request for a hearing to contest the department's negative action.
- (5) On September 22, 2010, the State Hearing Rev iew Team again denied claimant's application stating in its' analys is recommendation: the evidence supports that the claimant w ould retain the ability to perform

simple repetitive tasks. The claimant's impairments do not meet/equal the intent or severity of a Social Securi ty Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple and repetitive work. Therefore, based on the claimant's vocational profile of 50 years old a high school education and a history of light-skilled employment, MA-P is denied using Vocational Rule 204.00 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impair ments would not preclude work activity at the above stated level for 90 days. Listing 12.03 was considered in the is determination.

- (6) Claimant is a 50-year-old woman whose birth date is Claimant is 5'7" tall and weighs 224 pounds. Claimant is a high school graduate and attended one year of college. Claimant is able to read and write and does have basic math skills.
- (7) Claimant currently wo rks at the library aide. She has worked there form 1996 to present. She works 27 hours per week and earns \$ per hour.
- (8) Claimant alleges as di sabling impairments: schizophrenia as well as sore joints, swelling feet, hurting knees.

#### CONCLUSIONS OF LAW

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (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 estab lished by Title XIX of the Social Sec urity 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 substant ial 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 deter mine disability. Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I 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 di sease 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 with out 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 wa lking, 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite 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 s everal considerations be analyzed in sequential order. If disability can be ruled out at any step, analys is 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 clie nt's symptoms, signs, and laboratory findings at least equiv alent 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 forme r work that he/she performed within the last 15 years? If yes, t he 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, A ppendix 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 engaged in substantial gai nful activity and is currently working as a library aide, earning \$ per hour working 27 hours per week. Claimant is disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates claimant testified that she can stand for 30-60 minutes at a time but she has no limits on her ability to sit. She stated that she can't walk far because her knees hurt and she is not able to squat but she can bend at the waist, shower and dress herself, tie her shoes and touch her toes. Claimant testified that her level of pain on a scale from 1-10 without medic ation is a 10 and with medication is a 0. Claimant testified that she is right handed and there is nothing wrong with her hands and ar ms and there is nothing wrong with her legs and feet. Claimant testified that she can carry 40 pounds, and she doesn't smoke, drinks on occasion and she has never done drugs. Claimant testifi ed that she works 5 days per week and she lives in a house with her mo ther and she has no children and she is single. testified that she makes approximately \$ per month at work. Claimant does have a driver's license and drives 27 miles each way to work everyday. Cla imant testified that she does not cook but she microwaves a lo t and she does grocery shop one time per week with her mother and she cleans her home by vacuuming, washing dishes and she cuts the grass with a riding lawn mower. Cla imant testified that she really does nee d her medication in order to keep func tioning appropriately because she has schizophrenia and has had schizophrenia since she was 19 years old.

Medical reports indicate that claimant has very mild ideas of reference or persecution or unusual beliefs and psychic powe rs, spirits, UFO's, or unr ealistic beliefs in her own ability. Not strongly held and has some do ubt. She does not have hallucinations and she has very mild peculiar use of words or rambling but speech is comprehensible. She

has no abnormal pauses bef ore speaking, speech is normal. She has minimal, spontaneous display s of emot ion occur when least expected. However, there is a reduction in degree or intensity. She made the extreme normal. She has a reduced social drive. She has minimal reduction in either the desire to initiate contracts or the number of contacts. They seem initially guarded but has the ability to establish relationships over time. Contacts are enjoyable. She is clean and dressed neatly (p. 51). On page 88 the client continued to work at the library, is busy with choruses, and plays cards twice a week. She denied any problems with mood or anxiety and denies psychotic symptoms. She was taking and noted that her confusion was gone and she is taking and she has no side effects. Her current GA F is 60, her problem is chronic and her axis 1 diagnosis is schizophrenia (p. 48).

This Administrative Law Judge did consider the entire packet of 58 pages of medical reports in making this decision.

At Step 2, claimant has the burden of proof of establishing that she has a severe ly 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 clinic al findings that suppor t the reports of symptoms and limitations made by the claimant. There are no labor atory 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 ba sed upon her reports of pain (s ymptoms) 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 insu fficient to establish that claim ant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: schizophrenia.

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/ps ychiatric e vidence in the record indicating claimant s uffers severe mental limitations . There is no ment al residual functional capacity assessment in the record. There is in sufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it w ould prevent claimant from working at any job. Claimant was or iented to time, person and plac e during the hearing. Claimant was able to answer all

responsive to the questions. The evidentiar y record is insufficient to find that claimant suffers a severely restrictive mental impair ment. 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 bas ed 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 u pon her ability to perform her past relevant work. There is no ev idence upon which this Administrative Law Judge c ould 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, s 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 capac ity is what an individual can do desp ite 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 class ify 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 lik e 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 wor k 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 categor y 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 objecti ve 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 act ivities of daily liv ing do not appear to be very limit ed and she should be able to per form 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 comb ination of impairments which prevent her from performing any level of work for a period of 12 mont hs. The claimant's te stimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/ps ychiatric evidence contained in 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 medical evidence contained in the file as it relates to of proportion to the objective claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establis h that claimant has no residual functional capacity. Clai mant is dis qualified 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. Under the Medical-Vocational guidelines, an individual (age 50), with a high sc hool educ ation and an unskilled to semi-skilled work history who is limited to light work is not considere disabled.

The department's Program Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be disabled, caring for a disable diperson 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 Stat e 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 conclusion sof 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

Y. Lain

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

Date Signed: November 18, 2010

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Date Mailed: November 19, 2010

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

