

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: 2010-7833

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date: [REDACTED]

[REDACTED]

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 [REDACTED]. 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 August 5, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 18, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On October 5, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 4, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: while there is evidence of herniated disc at multiple levels, there is no evidence to support that the claimant is significantly limited secondary to this diagnosis. It is reasonable to assume that performing duties or past relevant work is precluded by this condition, that the claimant would still retain the ability to perform duties associated with a light exertional level of tasks. Past relevant work EMT-paramedic, 079.364-026, 6V. Skills transferrable to but not exclusive to: first aid attendant, 354.677-010, 3L and medical assistant, 079.362-010, 6L. The claimant's impairments do not meet/equal the intent of severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile, of 53 years old, a high-school education, and history of very heavy, skilled employment, Medicaid-P is denied using the Vocational Rule 202.15 as a guide. Retroactive Medicaid-P was considered in this case and is also denied. State disability is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listing 1.04 was considered in this determination.

(6) The hearing was held on January 12, 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 January 15, 2010.

(8) On January 21, 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 202.15.

(9) Claimant is a 51-year-old woman whose birth date is [REDACTED]. Claimant is 5' tall and weighs 140 pounds. Claimant is a high school graduate and has emergency medical technician certification. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked [REDACTED] for [REDACTED] as Emergency Medical Technician. Claimant has also worked as a medical assistant in a lab drawing blood and doing urinalysis.

(11) Claimant receives \$ [REDACTED] per month in a widow's pension.

(12) Claimant alleges as disabling impairments: Herniated disc, hypertension, carpal tunnel syndrome 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 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 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).

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).

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).

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

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

The objective medical evidence on the record indicates that claimant was involved in a motor vehicle accident while working as an emergency medical technician. Post-accident there is evidence of multi-level disc herniation of the cervical spine and one level of lumbar spine. There is no evidence of functional limitations related to these herniations. Medical Examination Report of ██████████ indicates a well developed, slender female. Height is 5', weight is 140 pounds. Blood pressure 160/84, pulse is 73, temperature is 37. Head is normocephalic, atraumatic. Neck is supple, there is no mass or bruits. There is a positive Lhermitte's sign. There are trigger points of the paraspinal cervical area with trapezius muscle spasm. There are no meningeal signs. Extremities are well-perfused. There is no edema, no trophic changes. Straight leg raising is negative. No pedal edema or calf tenderness, no Homans' sign. Examination of the lumbar spine shows bilateral lumbosacral muscle tenderness and limited

range of motion. There is no spasm or deformity. Neurological Examination Mental Status: The patient is awake and alert and oriented x3. Speech and memory are intact. Cranial Nerves I through XII are intact. Muscle strength is 5/5 in the upper and lower extremities. There is no pronator drift or spasm. Deep tendon reflexes are 2+ in the upper and 3+ in the lower extremities. There is a left Hoffman, there is not Babinski, there is no clonus, no spasticity, there is no atrophy or fasciculations. Sensory Examination: Light touch and pinprick, proprioception, vibration, pain and temperature are intact in the upper and lower extremities. Gait is normal-based. She can do heel and toe stand. There is no Romberg's sign present. Coordination is intact. On a review of an MRI of the cervical spine performed in [REDACTED] there is a multilevel area of disc herniation and osteophytic formation, with evidence of spinal canal compromise and ventral cord compression, particularly at C5-6 and C6-7, to a lesser degree at C4-5. The doctor did not appreciate spinal cord signal changes present. The MRI of the lumbar spine shows a central disc herniation at L5-S1, with minimal degenerative changes. The MRI of the brain show only minimal ischemic changes in the subcortical white matter. Claimant presented with cervical myelopathy secondary to multilevel disc herniations, most pronounced as C5-6 and C6-7. She also presents with discogenic low back pain secondary to an L5-S1 disc herniation. The recommendation is that the claimant is in need of surgical intervention to the cervical spine in an effort to decompress the spinal cord and prevent progression of myelopathic symptoms. (p10) Doctor indicated that claimant is disabled from working, in need of housekeeping assistance for household duties. The clinical impression is that claimant's condition is improving and that she can stand or walk less than 2 hours in an 8 hour day, but can sit less than 6 hours in an 8 hour day. She can carry less than 10 pounds but can never carry 10 pounds or more and she can use both of her upper extremities for simple grasping and fine

manipulating but not for reaching pushing and pulling and cannot operate foot and leg controls with either foot or leg. Claimant had no mental limitations and needed assistance with heavy household activities and has the same physical characteristics as listed above. The Medical Examination was filled out by a Chiropractor on [REDACTED] (pp7-8) New information indicates that claimant has a bilateral median nerve entrapment at the wrist-Carpal tunnel syndrome, left C8 radiculopathy and bilateral L5, S1 radiculopathy. Evaluation of the right median motor nerve showed prolonged distal onset latency. The median sensory nerves were not elicited. The left Sural Anti Sensory nerve showed prolonged distal peak latency. The right Sural Anti Sensory nerve showed prolonged distal peak latency. The right Ulnar Anti Sensory nerve showed reduced amplitude. All remaining nerves were within normal limits. All H Reflex left vs. right side latency differences were within normal limits. The Right Tensor FascLat, the Right GluteusMed, the Left Tensor FascLat, the Left GluteusMed, the Left Triceps, the Left ExtIndicis, the Right L5 Parasp, the Left L5 Parasp, and the Left C8 Parasp muscles showed increased insertional activity and slightly increased spontaneous activity. All examined muscles showed no evidence of electrical instability.

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 which meets the duration of 12 months. Claimant impairments do not meet duration as she stated that she received her injuries [REDACTED] in a car accident/motor vehicle accident. The clinical impression is that claimant is improving. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant does

have some neck injuries and some radiculopathy in her neck as a result of the motor vehicle accident, but the clinical impression is that claimant is improving and therefore, the medical examination reports have restricted claimant from tasks associated with occupational functions based upon claimant's 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 evidence is insufficient to establish that claimant has a severely restrictive physical impairment and the claimant's impairments do not meet duration.

There is insufficient objective medical/psychiatric evidence in the file 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. Claimant was able to answer all questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. 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. This Administrative Law Judge finds that claimant has established that she cannot currently perform her prior work as an emergency medical technician based upon her injuries as a result of the car accident and neck pain. However, claimant should be able to perform her prior work as a lab assistant, drawing blood or

urinalysis even with her impairments. Therefore, claimant is also disqualified from receiving disability 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. Claimant testified on the record that she does have a drivers license and she drove herself to the hearing about 20 minutes. Claimant testified that she usually borrows a car or a friend takes her where she needs to go. Claimant does testify that she cooks 3 or 4 times per week and cooks microwave dishes. Claimant does grocery shop 2 times per month and she needs help carrying the bags because of back pain. Claimant testified that her son does most of the cleaning but she does do the dishes and she knits, reads, and watches game shows 6-7 hours per day. Claimant testified that she can stand for 15 minutes at a time and can sit for 30 minutes at a time. Claimant testified that she can walk a mile, but cannot squat. Claimant can bend at the waist partially and can shower and dress herself, can tie her shoes if she lifts her leg up but cannot touch her toes. Claimant testified that her level of pain on a scale from 1-10 without medication is a 9 and with medication is a 6-7. Claimant testified that she is left handed and her left hand is numb and she gets spasms on her left side. Claimant testified that the heaviest weight that she can lift is 15 pounds or 10 pounds and she does smoke a half pack of cigarettes per day and the doctor's told her to quit, but she is not in a smoking succession program. Claimant testified that she gets up and brushes her teeth, washes up and makes coffee, looks at her bills and watches TV and sits down to rest. Claimant talks on the phone, watches TV and eats. Claimant testified that she goes to physical therapy 1 time every 2 weeks and to the chiropractor for pain management.

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'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.

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.

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

