

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: 2010-10764

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 11, 2010

Oakland 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 February 11, 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 April 28, 2008, claimant filed an application for Medical Assistance, State Disability Assistance alleging disability.

(2) On August 13, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 19, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On October 30, 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: the claimant does not have a severely impairing psychiatric condition at this time. Physically the claimant would retain the ability to perform light one handed occupations. The claimant is 39 years old, has a high school education and has a history of light unskilled employment. The claimant's past relevant work as a cleaning person is unable to be performed with above limitations. Using Vocational Rule 202.21 as a guide, this claimant is denied as the claimant will retain the ability to be gainfully employed in other occupations. Medicaid-P, Retroactive Medicaid-P, and State Disability are denied by this decision. Listings 1.02, 1.03, 1.04, 3.10, 12.04, and 12.06 were considered in this determination.

(6) The hearing was held on February 11, 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 February 12, 2010.

(8) On February 19, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to medical vocational rule 202.13.

(9) Claimant is a 39-year-old woman whose birth date is [REDACTED] Claimant is 4'11" tall and weighs 291 pounds. Claimant attended the 10th grade and does not have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked 2006 cleaning businesses and homes as a janitor. Claimant has also worked driving a bus for senior citizens and the handicap and as a manager at [REDACTED] for 12 years. Until recently claimant was receiving Medical Assistance based upon her being a caretaker relative but her son turned 18.

(11) Claimant alleges as disabling impairments: Depression, panic attacks, sleep apnea, shoulder pain, hypertension, hepatitis c, bad knees, cardio obstructive pulmonary disease, adhesions, anemia, and abdominal pain.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a CT scan report dated January 26, 2010 indicates that a CT was performed without contrast and reveals fatty liver metamorphosis. Base of the lungs is normal, spleen is normal. Status post cholecystectomy. Both kidneys are normal. Both adrenal glands are normal. No evidence of lymphadenopathy seen. Visible portion large and small bowel is intact. The impression was fatty liver metamorphosis otherwise essentially negative study. (p. 3 of new info) Claimant also submitted a February 9, 2010, letter from her doctor indicating that she is unable to work and it is unknown at this time how long of a duration she will be unable to work and she was diagnosed with sleep apnea, abdominal pain, and adhesions, hepatitis, COPD, hypertension, vaginitis, obesity, and osteoarthritis (p 5 new info). A medical examination report which is not dated indicates that claimant could do simple grasping, reaching, pushing and pulling and fine manipulating with her right hand and she can operate foot and leg controls with both legs and feet. Claimant could stand or walk at least 2 hours in an 8 hour day and sit less than 6 hours in an 8 hour work day. She can occasionally carry less than 10 pounds and her clinical impression is that she is deteriorating and that she has some problems with sustaining concentration. (p 4) An MRI of the left shoulder was taken May 8, 2009, and the impression was high grade partial thickness tear involving the supraspinatus tendon at the rotator interval (rim-vent tear) and a subadjacent bone marrow edema at the junction of the humeral head and greater tuberosity of the humerus. (p 5)

An MRI of the right knee taken May 8, 2009, indicates tabernous hemangioma of the medial condyle of the tibia. The balance of the study was otherwise unremarkable. (p 6) A July 14, 2009, disability determination services examination indicates that this is a 39 year old, white female, height 4'11", weight 272 pounds. She appeared older than her stated age, her hygiene and grooming were fair. She had good eye contact. She sat in the chair comfortably. She had normal posture, her gait was slow. She came with her mother who stayed in the waiting room during the interview. The patient was in touch with reality. Her self-esteem was average. She displayed psycho agitation. She has limited insight to her illness. She tends to exaggerate her physical symptoms. Her speech is spontaneous, clear and at times over inclusive and circumstantial. Her thoughts are very well organized, and easy to follow. She denied auditory hallucinations. She denied any command hallucinations. She had no delusions or ideas of reference. She denied any homicidal or suicidal ideation. She did admit to sleep disturbance and increased appetite with 80 pound weight gain over a two year period. Most of the thought content was according to her physical complaint that she was somatically preoccupied. (p 17) Her mood was anxious and irritable at times. Her affect was constricted and appropriate to thought content. The claimant was alert and oriented to person, place and time. She stated it was July 2009; however, she was not able to remember the exact date. In her immediate memory she was able to repeat 4 of 6 digits forward and 3 of 6 backwards. In recent memory she was able to recall 1 of 3 objects after 3 minutes. In the past she named past presidents as Obama, Bush and Clinton. She was able to give her birth date as June 8, 1970. For large cities, she named San Francisco, Orlando, Pittsburgh, Detroit, and Cincinnati. Current famous people are Michael Jackson. In current events was the death of Michael Jackson. In her calculations her response to serial 7's was 93, 86, 79, 72, and $7+5=12$, and $6*5=30$. When asked about don't cry over spilled

milk, she said “don’t cry if you spill your milk”. In similarities and differences, when asked to explain an apple and an orange, she said “both are food” and the differences were, color and shape. When asked what she would do if she found a stamp addressed envelope, she said “mail it”, and when asked about her plans for the future, she said “get her 10 year old son back in her custody.” Her diagnosis was depressive disorder, NOS, with panic disorder without agoraphobia and her GAF was 50. Her prognosis was fair with continued treatment and she would be able to manage her funds (p 18). A CT scan of her abdomen and pelvis taken September 16, 2008, indicates that there was a large heterogeneous mass centrally into the right with areas of low attention, etiology is indeterminate. The impression was fatty liver and pelvic mass.

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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant does have a rotator cup tear, which would cause her some pain, however, the clinical impression is that claimant is deteriorating, however 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, panic attacks, and anxiety.

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 resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. However, the mental status report indicates that claimant was oriented x3 during the examination. 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. 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. 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 or sedentary work. As a bus driver or a manager at

Arby's, does not require strenuous physical exertion, 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 again at Step 4.

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

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

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

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

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

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

20 CFR 416.967(b).

The Medical Review Team determined that claimant should not to any frequent stooping, crouching, or overhead reaching based upon the fact that she does have problems with her shoulder. 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.

The following examples of sedentary (one handed) unskilled jobs that the claimant could do:

usher, counter clerk, surveillance system monitor in furniture/rental consultant/retail trade.

County business patterns showed that over 751,000 workers are employed in MI in retail industries, indicating that such jobs exists, and significant numbers in this regions economy.

Over 30,000 workers are employed in MI in amusement and recreational services in which usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 are employed in general merchandise stores, photo finishing, laboratories in photography supply stores, indicating such jobs exist in significant numbers in this regions economy.

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.

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. Under the Medical-Vocational guidelines, a younger individual (age 39), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 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: May 11, 2010

Date Mailed: May 12, 2010

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

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

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