

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: 2010-15169
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 18, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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, an in-person hearing was held on February 18, 2010. Claimant was represented by L [REDACTED].

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) July 23, 2009, claimant applied for MA and retroactive MA.
- (2) September 2, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
- (3) September 10, 2009, the department sent claimant written notice that the application was denied.

(4) December 7, 2009, the department received claimant's timely request for hearing.

(5) January 20, 2010, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) February 18, 2010, the in-person hearing was held.

(7) Claimant asserts disability based on impairments caused by diabetes, bad back, knee surgery, and hip pain.

(8) Claimant testified at hearing. Claimant is 46 years old, 5'7" tall, and weighs 270 pounds. Claimant completed high school and has a four year college degree in business management. Claimant has a driver's license but does not drive. She cares for her needs with assistance at home.

(9) Claimant's past relevant employment has been as a legal secretary and administrative assistant.

(10) April 30, 2009, claimant presented to hospital complaining of chronic back problems with recurrent left lower extremity weakness off and on and bowel incontinence. Claimant was admitted and underwent physical exam that revealed moderate point tenderness over the mid lumbar spine with moderately limited range of motion in the back and lumbar spine including decreased flexion and extension and right lateral bending. She was noted to have decreased rectal tone. Neurologically she was intact except for localized weakness of her left leg and left foot which were moderate and a decreased sensation in the left leg. Reflexes were 2+ with the exception of the left Achilles and the left patella which were 1+. MRI of the spine and x-rays revealed no acute disease. Claimant was seen in consultation by neurology and by neurosurgeon who did not feel that patient had any cord impingement to explain her symptoms. The treatment records indicate that claimant's back pain improved and she responded to pain

medications. She was fully continent of bowel and bladder in the hospital and was ambulating and comfortable in her chair. Claimant was discharged to home and her status was significantly improved. Claimant was discharged on May 5, 2009. Department Exhibit A, pgs 38-39.

(11) October 26, 2009, claimant underwent an independent physical examination and functional assessment. A narrative report was prepared that indicates, in pertinent part: claimant ambulates with auxiliary crutch under the left arm. Head is normocephalic, midline scar on the frontal region of the skull; no signs of diabetic retinopathy on this non-dilated exam; hears conversational speech; no masses, no adenopathy or enlarged thyroid; no bruits or carotid arteries; no JVD in the neck; chest is clear to auscultation. Heart has normal S1, S2 with no murmur or S3/S4. Abdomen has no masses or organomegaly. There is no pain to percussion, positive bowel sounds, and no bruits. Extremities show no sign of cyanosis or edema of limbs; no joint erythema or edema; radial and pedal pulses intact; pain at the left knee with swelling noted about the joint and patella; LS scar. Cranial nerves 2-12 are intact. There is no muscle atrophy. Manual muscle testing was normal. There was no muscle spasm. JAMAR 60 right and 50 left, right-handed. Patient has poor position sense in the toes. Straight leg negative bilaterally in the seated position. Rapid alternating movement slowed on the left foot both in the standing and sitting posterior; no tremor or ataxia; fine and gross motor coordination intact for ADL's; deep tendon reflexes equal with no signs of clonus; Babinski is negative. Range of motion is normal to all areas except the left knee. Range of motion on the left knee was done passively 0-90 degrees but it was painful. Gait is limping on the left leg due to left knee pain and recent debridement with the medial meniscus repair; she is not able to balance to heel, toe, and tandem on the left foot. She squats low enough to get into the chair without the crutch but she uses her arms for support; she ascend the scale with the right foot first to avoid stepping on the

left leg. Doctor's conclusion is recent arthroscopy surgery on the left knee to debride it and repair a medial meniscus tear. Claimant may have slight clumsiness of the left foot in addition to degenerative disease of the left knee causing pain on weightbearing. She has poor position sense in her feet which contributes to falling also. Patient has visual acuity with corrective lenses today. She is to return to the ophthalmologist. At present time, patient cannot do the lower limb exercises on the left knee due to the recent surgery and she is crutch dependent for walking. Upper limbs are strong and she is able to sit but cannot transfer with weight in her hands.

Department Exhibit A, pgs 53-55.

CONCLUSIONS OF LAW

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has back pain which improved with pain medication. Claimant underwent knee surgery on recent unknown date and at time of post surgery physical examination in October 2009, claimant continued to

have some difficulties with her left knee. Physical examinations revealed claimant had some weakness, pain, and loss of sensation in the left leg. She exhibited poor position sense in toes. At hearing, claimant credibly testified to bladder and bowel incontinence, severe pain in her hips, and severe pain in her left knee. However, the objective medical evidence of record does not support these severe impairments. Accordingly, the objective medical evidence must be given the greater legal weight. Finding of Fact 10-11.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as an administrative assistant and legal secretary. See discussion at Step 2 above. Finding of Fact 9-11.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-11.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary work activities. Considering

claimant's Vocational Profile (younger individual, high school graduate or more, and history of skilled/semi-skilled work) and relying on Vocational Rule 201.22, claimant is not disabled.

Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability.

Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 9, 2010

Date Mailed: August 10, 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 receipt 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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