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: 2010-15599
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
February 16, 2010
Sanilac 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, a telephone hearing was held on Febuary 16, 2010.

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) August 8, 2009, claimant applied for MA and retroactive MA.

(2) December 8, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) December 10, 2009, the department sent claimant written notice that the application was denied.

(4) December 21, 2009, the department received claimant's timely request for hearing.

(5) January 22, 2010, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) February 16, 2010, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by chronic fatigue, fibromyalgia, and inflammation of the brain stem.

(8) Claimant testified at hearing. Claimant is 51 years old, 5’ tall, and weighs 100 pounds. Claimant completed ninth grade and a GED. She is able to read, write, and perform basic math. Claimant has a driver’s license but does not drive. She cares for her needs at home.

(9) Claimant’s past relevant employment has been cleaning houses.

(10) November 9, 2009, claimant underwent an independent physical examination and a narrative report was prepared. Physical examination revealed blood pressure of 116/70. Pulse 80 and regular. Respiratory rate 16. Weight 103.3. Skin was normal. Visual acuity was 20/20 without corrective lenses bilaterally. Pupils are equal, round, and reactive to light. Neck is supple without masses. Breath sounds are clear auscultation and symmetrical. There is accessory muscle use. She held her left chest wall area and did have some splinting in this area due to pain. Heart has regular rate and rhythm without enlargement and normal S1 and S2. Abdomen has no organomegaly or masses. Bowel sounds are normal. Extremities have no clubbing or cyanosis. There is no edema appreciated. Peripheral pulses are intact. There is no evidence of joint laxity, crepitance, or effusion. Grip strength remains intact. Dexterity is unimpaired. Patient could pick up a coin, button clothing, and open a door. Patient had no difficulty getting on and off exam table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping.

Straight leg raise is negative. There is no prevertebral muscle spasm. Range of motion studies of the joints is full. Cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes in the lower extremities are 2+ and symmetrical. Romberg testing is negative. Patient walks with a normal gait without the use of assistive device. Doctor's conclusions are systemic lupus erythematous by history and chronic fatigue. Doctor indicates he did not find any skin rashes, nephritis, or pulmonary disease. Patient does complain of costochondritis and did have some chest wall tenderness with palpation. She was able to do orthopedic maneuvers and a range of motion was normal. At this point, avoidance of repetitious lifting or carrying of over 20 pounds would be indicated. Department Exhibit A, pgs 3-5.

(11) April 3, 2009, claimant underwent an independent psychological exam and a narrative report was prepared. Claimant reports that she has chronic fatigue syndrome, depressed mood, low blood sugar, carpal tunnel, and anxiety. Claimant responded to instructions and positive criticism well but tended to excess circumstantial speech and a propensity to tangible thinking. Overall, she was cooperative, verbally responsive, attempting all tasks and activities requested, and worked diligently. Eye contact was good. Thoughts were organized, and goal-directed. Content of communication was age appropriate. Claimant was fairly attentive, exhibiting little difficulty understanding directions, and she did not need them repeated. Mood was reported as depressed and worried and she appeared at least moderately depressed, irritable, and worrisome. Motor activity was within normal limits. Contact with reality was fair. Self esteem was reported as "Well, like I don't have too bright of a future." Claimant reported some auditory hallucinations. Thought content was otherwise appropriate and there was no evidence of thought disorder. She did not demonstrate any bizarre behaviors. Symptom presentation was conveyed in a dramatic fashion at times, though claimant appeared sincere in her presentation.

She denied and did not show any indication of present hallucinations, delusions, thoughts of being controlled by others, unusual powers, or suicidal homicidal ideation. Claimant reported taking two to three baths per day because she feels dirty. Doctor indicated in the summary that claimant performed within normal limits on mental status inquiries and her intellectual functioning is estimated to be average. Her description of activities suggest she is independently able to engage in a number of adaptive activities of daily living at this time. Based on information gathered in this assessment, this individual appears to be able to attend, comprehend, and follow basic instructions, and she is likely able to perform a variety of activities. Social functioning is intact, and she is likely able to interact adequately with coworkers, supervisors and the general public. Axis I diagnoses are depressive disorder and anxiety disorder. GAF was assessed at 60. Department Exhibit A, pgs 14-19. September 28, 2009, claimant underwent a psychological assessment and a narrative report was prepared. The report indicates findings similar to exam performed in April 2009. Impression indicates that patient does not indicate any organic syndrome. She does not have suicidal thoughts. Attention and concentration are grossly intact. Remote memory is intact. Cognitive functioning is intact. Axis I diagnoses are depressive disorder and anxiety disorder. Department Exhibit A, pgs 23-25.

(12) August 12, 2008, claimant underwent physical examination by a cardiologist. Physical exam revealed symmetrical chest. First and second heart sounds are normal. There is no evidence of any murmur. Lungs are clinically clear to auscultation and percussion. Peripheral pulsations are 2+ and there is no evidence of any edema or phlebitis. Neurological exam is grossly normal. EKG showed a normal sinus rhythm without acute ischemic changes. Doctor indicates impression of atypical angina and history of depression. Department Exhibit A, pgs 20-22.

(13) October 31, 2007, claimant underwent an orthopedic examination after complaining of right hand pain and numbness, bilateral wrist pain and numbness. In pertinent part, treatment notes indicate range of motion of the upper extremity is normal, including elbow, forearm, wrist and fingers. Neurologic exam demonstrates numbness and tingling along the median nerve distribution of the hand. Provocative maneuvers including Tinel's and Phalen's reproduce symptoms. Motor exam testing thenar muscle does not show any weakness or atrophy. Vascular exam is unremarkable with normal pulses, color, warmth, and capillary refill. Palpation demonstrates the MP joint of the index and middle fingers are painful but have normal range of motion and normal stability. There is no warmth or redness. There is thickening consistent with old strain injuries. X-rays of the wrist bilateral reveal no radiographic abnormality. X-rays of the right index finger and right middle finger revealed no radiographic abnormality. Doctor's impression was carpal tunnel syndrome, Grade 1, bilateral wrist; bilateral hand pain and numbness; old strain injury of the MP joint of the right index and middle fingers; right index finger and finger pain. Department Exhibit A, pgs 31-32. December 13, 2007, claimant visited her orthopedist for physical examination following surgery on the left wrist. Treatment notes indicate that no complications have been encountered and heeling has progressed as expected. Department Exhibit A, pg 48-49.

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 –
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> (1) Medical history.
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> (2) Clinical findings (such as the results of physical or mental status examinations);
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> (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 <u>not</u> 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 by history, claimant has systemic erythematous and chronic fatigue. Physical exam revealed no skin rashes. There were no findings of nephritis or pulmonary disease. Claimant's physical exam was within normal limits. The objective medical evidence of record indicates that claimant has depression and anxiety. The cognitive functions are within normal limits. Her GAF is assessed at 60 indicative of moderate to mild symptoms or difficulties. The objective medical evidence of record indicates that claimant did have mild carpal tunnel syndrome. She underwent surgery on the left wrist and doctor notes indicate a normal recovery. Finding of Fact 10-13; DSM IV, 1994 R. At hearing, claimant testified to severe incapacities, indicating that she was unable to draw her own bath or prepare her own meals. She indicated that she had to stay in bed all day. This testimony is not consistent with the objective medical evidence or record. Accordingly, the objective medical evidence of record shall be given the greater legal weight.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe physical and/or mental impairments that have lasted or are expected to last 12 months or more and prevent all work for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet or equal the intent or severity of any Social Security Listing.

At Step 4, claimant's past relevant employment has been in housecleaning. See discussion at Step 2 above. Finding of Fact 9-13.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant is unable to perform the duties required by her past relevant employment cleaning houses. Accordingly, claimant is disqualified 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 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing unskilled, light work activities. Considering claimant's Vocational Profile (closely approaching advanced age, limited education, and history of unskilled work) and relying on Vocational Rule 202.10, claimant is not disabled. Accordingly, claimant is disqualified 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: May 10, 2010

Date Mailed: May 11, 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.

JAB/db

cc: [redacted]