

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: 2010-20632  
Issue No: 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 24, 2010  
Kalamazoo 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 March 24, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for 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 October 6, 2009, claimant filed an application for State Disability Assistance (SDA) benefits alleging disability.
- (2) On January 21, 2010, the Medical Review Team denied claimant's application.
- (3) On February 2, 2010, the department caseworker sent claimant notice that her application was denied.

(4) On February 11, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 3, 2010, the State Hearing Review Team again denied claimant's application stating that claimant was capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.17.

(6) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 4' 11" tall and weighs 146 pounds. Claimant attended the 8<sup>th</sup> grade and has no GED. Claimant testified she was in Special Education when she was in school. Claimant is able to read and write and is able to add and subtract and count money.

(7) Claimant last worked in 2007, for [REDACTED] cleaning homes. Claimant has also worked at [REDACTED] at [REDACTED] making sandwiches, and at [REDACTED] making medicine.

(8) Claimant alleges as disabling impairments: deteriorating spine, herniated disc, ulcers, gastroesophageal reflux disease, hip pain, pain in the legs and lower back, bi-polar disorder, twitching and problems with concentration.

#### 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).

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of

SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261.

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an emergency room report of April 20, 2009, indicates that the patient's ear, nose and throat reveal she has no facial swelling. She has no trauma. She has no trismus. Neck was subtle. The patient has some minor geographic tongue. Her teeth have multiple caries and she has some tenderness in the central incisor tooth number 9. She had no dental abscess at the base of the tooth. TM's were normal. External ears were normal and her sinuses were normal. The patient's lungs were clear to auscultation. The final impression was dental pain, frequent dental problem visits, overuse of narcotics and tobacco abuse. The patient was encouraged to stop smoking and to see the family health center dentist. She was discharged in fair condition. (Page 37)

A hospital emergency department report, dated May 22, 2009, indicates that claimant's pulse was 77, respiration was 16, blood pressure 125/69, pulse oximetry was 100%. Pain level was a 9/10. Head and neck were unremarkable. Trachea was in the midline. No JVD. No lymphadenopathy. Lungs were clear to auscultation. Heart had regular rate and rhythm. Abdomen was tender in the epigastric area. She has pain in the epigastric area with palpation. The skin was warm and dry. Laboratory analysis: EKG is normal sinus rhythm, no acute ST-T wave changes. There is no life threatening arrhythmia, ventricular rate is 80 beats per minute, PR interval is 118, QTC is 435 milliseconds. PT is 11.5 and grossly normal. White blood count is 8.3, hemoglobin is 13.5, hematocrit is grossly normal. The patient has had an abdominal and

pelvic CT scan with oral and IV contrast for evaluation of epigastric mass/possible pancreatitis which demonstrated no gross abnormalities whatsoever. The patient does not have any findings to suggest severe abdominal problems and her CT scan again showed there were no acute abnormalities seen. Gallbladder has been removed. There is mild dilation of the biliary tract secondary to cholecystectomy. Spleen is not enlarged. There is no hydronephrosis. Kidneys and adrenals and retroperitoneum are all normal. There is no small bowel obstruction. There is no free air. She has a small left ovarian cyst of 3.1 x 2.2 cm on the left ovary. The patient has chem profile, and is grossly normal. Troponin 1 is less than .09 and urinalysis was completely normal. Her discharge diagnosis was amphetamine abuse and tobacco abuse. (Pages 39, 40)

Per a surgical pathology report claimant was diagnosed with active chronic gastritis with H. pylori-like organisms. (Page 50)

Medical reports (page 67) indicate that claimant has drug-seeking behavior. On page 66, claimant received 120 tablets of [REDACTED] Extra Strength on September 15, 2009, and came to the doctor's office on October 5, 2009 and requested additional medication. (Pages 66, 67) She was diagnosed with hypertension, chronic low back pain, gastroesophageal reflux disease (GERD), depression with anxiety and nicotine addiction. Smoking cessation was encouraged. (Page 69) Claimant was alert and oriented x3. Her gross reflexes were +2. She has some mild tremors at rest in upper extremities. She has a tendency to shake her body back and forth. She said she was not having withdrawals from medication. She has some pain with straight leg raising and stretches, low back pain, no edema to the lower extremities, no microvascular changes at this time. (Page 69)

This Administrative Law Judge did consider the entire medical packet of 187 pages of medical documents.

Claimant testified on the record that she can stand for 5 minutes, sit for an hour, walk for 5 minutes, sit for an hour, walk 5 feet, and cannot squat. Claimant testified she can bend at the waist but it is painful. She can shower and dress herself, tie her shoes and touch her toes. Claimant testified that her pain on a scale from 1 to 10 without medication was a 9 to a 10 and with medication was a 7 to an 8. Claimant testified that she is left-handed and that her hands and arms were numb and she has swelling and pain in her legs and feet. Claimant testified the heaviest weight she can carry is 5 pounds, and that she does smoke ½ a pack of cigarettes per day and her doctor has told her to quit, but she is not in a smoking cessation program. Claimant testified that she stopped drinking 6 years ago and that she stopped taking methane and amphetamines approximately 6 years ago. Claimant testified that she does cook one to two times per week and she cooks things like hotdogs, macaroni and cheese and things in the microwave. Claimant testified that she does grocery shop once per month and she usually rides in the wheelchair. Claimant testified she does do dishes, vacuum, do laundry and that she watches television three to four hours a day and sleeps a lot.

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; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory 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 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 mental impairments: bi-polar disorder, concentration problems, twitching, and depression.

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. There is no mental residual functional capacity assessment in the record. 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.

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. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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. 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).

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 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.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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



2010-20632/LYL

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.

LYL/cv

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