

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: 2010-3529

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 20, 2010

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 January 20, 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 June 1, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 15, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 20, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 24, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 4, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requesting a psychiatric evaluation.

(6) The hearing was held on January 20, 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 21, 2010.

(8) On January 26, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a).

(9) Claimant is a 45-year-old woman whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 205 pounds. Claimant is a high school graduate and went to cosmetology school, but is not currently licensed.

(10) Claimant is able to read and write and does have basic math skills.

(11) Claimant was denied disability benefits by the Social Security Administration on April 21, 2009.

(12) Claimant last worked as a shampoo assistant in 1999. Claimant has also worked in the mail room, packing and sending out mail and at a waste water treatment plant working with the sewer system.

(13) Claimant alleges as disabling impairments: Attention Deficit Hyperactive Disorder, personality disorder, thyroid problems, back pain, diabetes, left leg pain, and fatigue, as well as emotional problems and the inability to be around people.

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 1999. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the psychiatric report, dated December 12, 2009, indicates that claimant came to the appointment by herself. She stated her father drove her to the appointment. She is 5' 10" tall and weighed 199 pounds. Her hygiene and grooming were fair. She denied any trouble remembering things. She was punctual to the appointment. The patient was in contact with reality. She had adequate self-esteem present, some psychomotor agitation was noticeable. She seemed to be motivated to get better. There is

no tendency to exaggerate symptoms. She has insight into her problems. In her stream of mental activity she was spontaneous, logical and goal-directed. No looseness of association or flight of ideas noted. In her mental train of thought content, the patient denied any auditory or visual hallucinations or paranoid delusions. She denied any suicidal or homicidal ideations. She did have a history of making one suicidal attempt in the past where she overdosed on medication. The patient described her mood as crying. Her affect was congruent. She described herself as a smart person. In the sensorial and mental capacities: The patient was oriented to time, person and place. She was able to state today's date of Saturday, December 12, 2009 and the place as a clinic. In her memory, in her immediate she was able to repeat three digits forward and three digits backward. In her recent memory, she was able to recall 3/3 immediately and after three minutes, she recalled 3/3 items. In her past, when asked to name the past few presidents, she named Bush and Clinton. When asked her date of birth, she was able to state that it was 9/9/64. She was able to name five large cities, current famous people and events without any problems. When she was asked to subtract 7s from 100, she said 93, 86, 79, 72, 65. She was able to multiply single digits. When asked about "the grass is greener on the other side of the fence", she stated, "it just looks green." When asked about "do not cry over spilled milk," she said, "do not worry." When asked about similarities and differences, the patient was able to identify similarities between a bush and a tree as "they both have leaves." In her judgment, if she saw a stamped, addressed envelope she'd put it in a mailbox. She was diagnosed with bi-polar I disorder. Her GAF was 40 and her prognosis was guarded and she would be able to manage her own benefit funds at this time. She was able to understand, retain and follow instructions and seemed to be able to function in a competitive, cognitive manner. As to mood liability, the claimant seemed to be able to function in a setting where there is supervision, interacting with co-workers, supervisors, and with the public. (Pages 2, 3).

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. In activities of daily living, the claimant has only moderate restrictions. Claimant testified on the record that she does have a driver's license and she doesn't usually drive. Her father usually takes her. However, claimant does live alone in a double-wide trailer which her parents pay for. Claimant receives Food Assistance Program benefits and the Adult Medical Program. Claimant testified that she does cook two to three times per week and cooks things like spaghetti and chili. Claimant does grocery shop one to two times per month and gets a ride to the store. Claimant testified that she does dust, vacuum, do laundry, and that she does water the lawn. Claimant testified that she can stand for 10 minutes, and sit with no limits. She stated that she can walk 6 or 7 blocks, but cannot squat and she can bend at the waist with difficulty. Claimant testified that she is able to shower and dress herself but not tie her shoes or touch her toes because she is too fat. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 7, and with medication was a 2. Claimant testified that she is right-handed and that it is hard for her to grip things. Claimant testified the heaviest weight she can carry is 20 to 30 pounds, and that in a typical day she goes and talks to her neighbor, listens to the radio and has dinner. Claimant alleged no issues in taking care of her daily needs. Claimant has experienced no episodes of decompensation, which have been of extended duration. A psychiatric examination report, dated May 28, 2009, indicates that claimant had limited social functioning. She completes daily chores around the house and does not frequently leave the home. She receives help from her parents. She was punctual and demonstrated fair hygiene. She was currently unemployed. She had a poor work history due to interference from psychological symptoms. She indicated paranoia, fear and

irrational thoughts and behaviors. Her current treatment is outpatient psychological therapy and medication. She was oriented x3 with poor adjustment at times. (Pages 12, 13)

On May 23, 2009, claimant had acute cellulites of the left second finger due to a cat scratch. She was discharged the next day after she was started on antibiotics. The swelling reduced, the redness diminished and she indicated a decrease in pain with no more drainage. Her heart showed a sinus rhythm and her lungs were clear. (Pages 16,17)

A Medical Examination Report, dated June 1, 2009, indicates that claimant was normal in all areas of examination except that in the mental where she was hyperactive and over-talkative, with a scattered thought pattern, unable to follow directions completely. She was alert to time and place, with a decrease in normal comprehension. She was 5' 10" tall and weighed 199.6 pounds. Her blood pressure was 110/80 and she was right-hand dominant and had 20/20 visual acuity. Her clinical impression was that she was stable, she had no physical limitation, and she had some mental limitations in comprehension, sustained concentration, and in following simple instructions as well as in social interaction. (Page 10,11)

The clinical impression is that claimant is stable. There is no finding that claimant has any physical impairments. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. There is insufficient objective medical evidence on the record to support claimant's restriction of herself from tasks associated with occupational functioning. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical evidence in the record indicating claimant suffers from mental limitations resulting from her Attention Deficit Hyperactive Disorder or personality disorder.

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).

The mental residual functional capacity assessment on the record indicates that claimant was oriented to time, person and place and was able to answer all the questions. Claimant was not delusional and did not have any hallucinations. Claimant was not psychotic. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was able to answer all the 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.

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 work. Claimant should be able to work as a shampoo assistant, as a packer in a mail room or work in the sewer system even with her impairments. There is insufficient objective medical evidence upon which this Administrative Law Judge can base a finding that claimant is unable to perform work 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.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence as it relates to claimant's ability to perform work. In addition, claimant did testify that she does receive substantial relief from her pain medication. 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 45), with a high school education or more 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,

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 13, 2010

Date Mailed: May 13, 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.

2010-3529/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

cc:

