

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201041302
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2010
Gladwin 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 July 29, 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) benefits?

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 March 29, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On June 8, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 11, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On June 18, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 12, 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) pursuant to Medical Vocational Rule 202.18.
- (6) Claimant is a 46-year-old woman whose birth date is [REDACTED]. Claimant is 5' tall and weighs 180 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant does have 2 years of college also.
- (7) Claimant last worked in 2009 as a caregiver for the [REDACTED]. Claimant has also worked as a cook in a deli and as a truck driver and selling car or RV parts and in fast food.
- (8) Claimant alleges as disabling impairments: back, hand, and knee pain, and hands going to sleep. Claimant alleges no mental impairments.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 claimant'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 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that she's homeless and stays with friends and her family and friends have been supporting her. Claimant is single with no children under 18 and does not have any income. Claimant receives Food Assistance Program benefits and does have a driver's license but no car. Claimant testified that she does cook everyday and can cook everything. She grocery shops one time per month and she needs help carrying the groceries. Claimant testified that she does not clean the home nor do any outside work. Claimant testified she watches television 1-2 hours per day. Claimant testified that she can stand for 10-15 minutes, sit for 20-30 minutes, and walk a ½ a block. Claimant testified that she cannot squat or touch her toes and that bending at the waist is painful. Claimant testified that she is able to shower and dress herself and tie her shoes if she is sitting. Her level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 7. Claimant testified that she is right-handed and her hands and arms go to sleep. Claimant testified that the heaviest weight she can carry is 10 pounds and that she does smoke 6-7 cigarettes per day and her doctor has not told her to give up smoking.

A May 5, 2010 Disability Determination Services medical report indicates that the claimant was cooperative in answering questions and following commands. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the examination. Blood pressure in the left arm was 140/90. Pulse was 86 and regular. Respiratory rate is 16. Weight is 196 pounds. Height was 60.5" without shoes. The skin was normal and the eyes and ears visual acuity in the right eye was 20/30 and in the left eye 20/50 without corrective lenses. Pupils were equal, round, and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. The chest and breath sounds were clear to

auscultation and symmetrical. There was no accessory muscle use. The heart there was regular rate and rhythm without enlargement. There was a normal S1 and S2. The abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular system there was no clubbing or cyanosis appreciated. There was no edema present. The peripheral pulses were intact. In the musculoskeletal area there was no evidence of joint laxity, crepitance, or effusion. Grip strength remained intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing, and open a door. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting, no difficulty hopping on the right and mild difficulty hopping on the left. Straight leg raising was negative. There was no paravertebral muscle spasm noted. There was synovial thickening of the left knee. Range of motion studies indicated that claimant was normal in all areas. In the neurological cranial nerves were intact. Motor strength and tone were normal. Sensory is intact to light touch and pinprick. There is areflexia in the left knee. Romberg testing is negative. The claimant walks with a mild left limp without the use of an assist device. Reflexes on the right knee and ankle were 2+ and on the left knee was 0 and ankle was 2+. The conclusion was claimant had some arthritis and synovial thickening in the left knee due to injuries. She did have significant diminished range of motion. She did walk with a mild left limp but is relatively stable. She did have some difficulty doing orthopedic maneuvers due to stiffness and pain. The remainder of her joints appeared stable. (Pgs. 24-28)

A radiology report from May 5, 2010 on the left knee indicates that there are no acute traumatic or intrinsic osseous abnormalities. There is a narrowing of the femorotibial joint, moderate laterally and minimally medially. There is minor marginal spurring and eburnation. Additional spurs arise from the tibial spines. The patellofemoral joint is well maintained. No erosive manifestations are observed at any level. Surrounding tissues are intact. The doctor could not identify any effusion or loose body. In the lumbar spine vertebral height and alignment are satisfactory. There is minor spondylosis at L5-S1. Remaining disc spaces are well maintained. There is facet arthrosis at L4-5, more marked on the right. The doctor could see no other abnormalities affecting posterior elements or S1 joints. (P. 29)

An April 28, 2010 mental status examination indicates that claimant was 45 years old and came to her evaluation unaccompanied. The claimant appeared to be overweight. She stated her height as 5' 2" tall and her weight as 175 pounds. Posterior and gait were normal. There were no unusual facial expressions. Clothing and hygiene were appropriate. She did not have any difficulty in finding the location. She arrived at the appointment approximately 20 minutes early. The claimant appeared to be in contact with reality. When asked how she felt about herself she replied that she does not feel good and she cannot do the things that she used to do. There was no unusual motor activity or hyperactivity. She did not appear to have a tendency to exaggerate or minimize symptomology. Her stream of mental activity can best be described as spontaneous. Speech can best be described as clear. The claimant denied the presence of any auditory or visual hallucinations, delusions, persecutions, obsessions or unusual powers. She did admit to feelings of worthlessness as she is not able to

drive her truck or do the things she used to do. She denied ever having any suicidal ideation. She did admit to some physical pain. When asked to rate her pain on a scale of 1 to 10 with 1 being no pain and 10 being the worst pain her pain is approximately 7. She reported some difficulty falling asleep but generally she gets a full night's sleep. She has also gained weight recently as she reported that she is inactive and has not felt like taking care of her self. The claimant's emotional reaction can best be described as depressed. She had a flat affect and spoke in a monotone voice. When asked to describe her mood she replied, it's just bugging the hell out of me that I can't do what I used to do." When asked to rate her mood on a scale from 1 to 10 with 1 being the best she ever felt and 10 being the worst, she stated a 6. The claimant was oriented x3. In her immediate memory she was able to repeat 6 digits forward and 5 digits backward. Recent memory she was able to recall 3 out of 3 objects after a 3-minute interval. In the past she named the president before our current president as Bush. She named the other presidents during her lifetime as Nixon, Clinton, Bush, and Reagan. She stated her birth date as August 4, 1964. She named the current President of the United States as Obama. She named five large cities as Dallas, Atlanta, Detroit, Lansing, and San Francisco. She named famous people as Patrick Swayze, Dolly Parton, and Johnny Cash. She named a current news event as the earthquakes are all over. The claimant's performance of serial 7's was 100, 93, and 84. The claimant's performance of serial 3's was 1, 4, 7, 10, and 13. The claimant's performance of single digit addition and multiplication was $6+5=11$, $7+2=9$, $5 \times 4=20$, $9 \times 6=54$, and $28/7=4$. When asked what the saying, "the grass is greener on the other side of the fence" means she replied it's wishful thinking, it's all the same, most people just think it's greater. When does the saying mean, "don't cry over spilled milk" she replied don't get upside over stupid stuff. When asked how a bush and tree are alike she replied they are both plants. When asked how they are difference she replied the bush is smaller. When asked what to do if you found a stamped, addressed envelope she replied I would mail it at the post office. When asked what she would do if you discovered a fire in a theater she replied I would get a manager. The claimant was diagnosed with adjustment disorder with depressed mood and a GAF of 50. Her prognosis was guarded and she would be able to manage her benefits funds. (Pgs. 31-34)

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 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 did not allege any disabling mental impairments but this Administrative Law Judge finds that the file indicates that claimant was depressed.

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 he 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 he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he 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 he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he 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 he 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 he 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 he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric 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 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. 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 he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 46), 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 20, 2010

Date Mailed: August 23, 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.

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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/vc

cc:

