

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

IN THE MATTER OF:



Reg. No: 2010-51526
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 13, 2010
Calhoun County DHS (21)

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 October 13, 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 July 30, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On August 13, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment's lack duration.
- (3) On August 20, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On August 25, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 9, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the

medical evidence admitted for review indicates that the claimant's condition has improved with treatment and is expected to continue to improve and not prevent all work for 12 months from the date of onset or from the date of surgery. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. It is expected that the condition will continue to improve and not prevent all work (past sedentary or light) for 12 months from the date of onset or from the date of surgery per the provisions of 20 CF R 416.909. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

- (6) Claimant is a 59-year-old woman whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 143 pounds. Claimant has a B [REDACTED] from [REDACTED] and [REDACTED]. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in 2004, correcting tests and as a trainer. Claimant has also worked as a disability claims examiner and for the [REDACTED] [REDACTED] authorizing drugs to Medical Assistance recipients and as a waitress.
- (8) Claimant alleges as disabling impairments: body cast in 1990, cataracts, bone spurs, 4 back surgeries, pain in the right leg, diminished feeling in the legs, stabbing pain in the neck, and right shoulder, diminished feeling in the right hand, blinding headaches all the time, a broken foot in July 2010, drilling pain in the teeth, as well as memory problems, and insomnia and transposing number, as well as joint problems.

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 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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that she currently has borrowed money and put it all on her visa card. Claimant lives alone in a house and is single with no children under 18 who live with her. Claimant testified that she has no income but does receive Food Assistance Program benefits. Claimant does have a driver's license and drives one time per week to the grocery store. Claimant does cook everyday and cooks things like hamburger, bacon, lettuce and tomato, roasts chicken, and soup. Claimant testified that she does grocery shop 1 time per week with no help and she does clean her home by dusting, doing dishes, vacuuming, and doing laundry. Claimant testified that she can walk up and down stairs and she watches TV all day and night. Claimant testified that she can stand for 30 minutes, sit for 10 to 15 minutes and she can walk for 20 minutes at a time. Claimant testified that she does have a body brace that she puts on, and she cannot squat. Claimant testified that she can bend at the waist, shower and dress herself, as well as tie her shoes but not touch her toes. Claimant testified that her knees pop out of joint. Claimant testified that her level of pain on a scale from 1-10 without medication is a 10+ and with medication is a 5. Claimant testified that she is right handed and she does have diminished feeling in her right hand and arm and diminished feeling in her legs and feet. Claimant testified

that the heaviest weight that she can carry is 5 pounds, but she is strong as an ox but she just can't lean over to pick anything up. Claimant testified that she watches TV, goes to the library and takes a half a block walk but has no other life.

On July 12, 2010, claimant presented to the emergency room with a foot pain. Claimant rode her bike to the emergency room and told the doctor that she had rolled her foot. A general physical exam stated that she was a 59 year old Caucasian female, who is alert, oriented, pleasant and cooperative. Her vital signs were stable: temperature 98 degrees, blood pressure was 153/87, pulse 98 and regular, respiratory rate was 16, pulse oximetry was 99% on room air. Eyes were anicteric. No injection. No drainage. No nystagmus. PERRLA, EOM I. TM's were normal with good light reflex markings. Oropharynx is negative. No exudate or petechia, no dysphagia or drooling. The neck was supple. No adenopathy, guarding, or meningismus. Lungs were clear to AP bilaterally. Heart rhythm is regular. No murmurs. The abdomen examination was benign. No guarding, tenderness, rebound or distension. Neurologic: the patient is AN 0*3. Cranial 2-12 were intact. No focal deficits or complaints. Skin had no rashes, lesions, ecchymosis, or petechiae. The musculoskeletal examination of the left foot had lateral edge pain over the 4th and 5th metatarsals proximally. She had no ecchymosis, erythema, or warmth to touch. Normal distal pedal pulses. Light touch sensorium was intact. No Achilles, calcaneal or tibial pain. No ankle pain. She can wiggle her toes. She can flex and extend her foot, although this does create some pain, and weight gain causes the most pain. The impression was a 5th metatarsal proximal shaft fracture. She was put in a posterior splint and given a set of crutches and told to do no weight bearing. Claimant got the cast off approximately 3 weeks before the hearing (pp. 375-376). Claimant was diagnosed with a stress fracture in the base of the 5th metatarsal (p. 374).

This Administrative Law Judge did read through the entire file of medical reports from pages 1-373, which had medical documents all from before the year of 2000, except for an internal medicine examination.

The internal medicine examination dated November 20, 2009, indicates that her physical examination was normal. She was frustrated that everybody looks at her and tells her how great she looks and how well she seemed to be doing. She seeks disability because of complaints of pain from the injuries she sustained from previous motor vehicle accidents (pp. 278-285).

The internist exam indicates that claimant's eyes were normal, her ears were normal, her nose was normal and no sinus tenderness. Tonsils were normal, teeth were present, lips were normal, and gums were not bleeding. The neck had an overall appearance, symmetry, tracheal position that were normal and no crepitus. It was supple with normal range of motion on flexion, extension, rotation and lateral bending. Trachea was midline. No carotid bruit. No thyromegaly and no tenderness or nodules, and isthmus or lateral loads. No cervical lymphadenopathy. No increased venous pressure, no use of accessory muscles for respiration. In the respiratory area, the lungs were clear to auscultation bilaterally. No rales, crackles, rhonchi, wheezes, rales, or

other adventitious breath sounds. Chest expanded symmetrically with no use of accessory muscles. No intercostal retractions. Normal chest percussion, without dullness, flatness or hyper resonance. No tactile fremitus. In the cardiovascular area, heart tones, S1 and S2 were present with regular rhythm, no rub, murmur, thrills or clicks. No clubbing or peripheral cyanosis. Abdominal aorta free of bruit. No edema for varicosities. Musculoskeletal area had normal joint examination, the joints in the upper and lower extremities including normal range of motion in the joints and the upper and lower extremities. No joint pain or contracture, misalignment, asymmetry, crepitation, defects.

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 alleges the following disabling mental impairments: memory problems, insomnia 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.

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 she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

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: November 18, 2010

Date Mailed: November 19, 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 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/alc

cc:

