

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: 2010-06
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 2009
Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 29, 2009.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) March 13, 2009 claimant applied for MA and retroactive MA.
- (2) April 8, 2009, the Medical Review Team (MRT) denied claimant's application for MA and retroactive MA. Department Exhibit A.

(3) May 14, 2009, the department sent claimant written notice that the application was denied.

(4) August 10, 2009, the department received claimant's timely request for hearing.

(5) October 7, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) October 29, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by depression, seizure disorder, and neck pain.

(8) Claimant testified at hearing. Claimant is 49 years old, 5'7" tall, and weigh 132 pounds. Claimant completed high school and holds an LPN license. Claimant is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as an LPN.

(10) April 10, 2009, claimant underwent a neurologic exam and a narrative report was prepared. Report indicates that claimant was awake, alert, and followed commands. Speech was spontaneous with no paraphasia. Judgment and insight were normal. Mood and affect were within normal limits when evaluated. Serial 7's were done and one mistake or score was 4/5. Patient was able to spell milk and world backward. Immediate verbal memory is 3/3 and at five minutes retention 3/3. No speech perseveration. Visual fields are intact. Extraocular movements are intact. Tongue was midline with no fasciculations. Muscle strength in the upper and lower extremities were symmetrical. Tendon reflexes were symmetrical. Gait was normal in the usual gait and tandem gait. Finger to nose testing was normal. Rapid alternating movements intact. Sensory exam was unremarkable. Doctor's impression is stated as claimant had two episodes of

seizure which related to abrupt termination of a specific medication. Claimant has been on [REDACTED] for prolonged period of time and there is history of [REDACTED] overdose. EG study was normal and the head CT scan was within normal limits. Department Exhibit A, Report, Neurology Clinic, 4-10-09.

(11) July 1, 2009, claimant was examined by a physician. Claimant reports that she is doing well on [REDACTED]. She feels quite stable. Motivation and mood are good. Neck pain has been reasonably controlled with [REDACTED] t and [REDACTED]. Assessment: dysthymia, doing well on [REDACTED]; chronic neck pain, stable on [REDACTED] and [REDACTED] and borderline elevation in blood pressure. Department Exhibit A, Treatment Notes, 7-1-09.

(12) April 2, 2009, claimant was discharged as a patient of [REDACTED]. Claimant had been evaluated on or about December 5, 2008. AXIS I diagnoses were adjustment disorder with mixed disturbance of emotions and conduct; [REDACTED] dependence; [REDACTED] abuse; and adult antisocial behavior. Claimant had been referred to services due to ongoing [REDACTED] case following an overdose of [REDACTED] and pain pills in January 2007. Claimant's children found her unconscious and contacted ambulance. Children were removed from her care. At time of evaluation, claimant reported last using [REDACTED] and [REDACTED] three to four weeks prior. Claimant did not participate in therapy as agreed upon and did not respond to clinic attempts to contact her. Accordingly, she was discharged. Department Exhibit A, [REDACTED] Report, 4-6-09.

(13) March 16, 2009, claimant's physician completed a Medical Examination Report (DHS-49) following exam that took place on 3-16-09. Doctor indicates diagnoses of cervical stenosis, seizures, and depression. Doctor indicates a normal physical exam with the exception of unsteady tandem gait. Doctor indicates that claimant's condition is stable and she is expected to

return to work effective October 1, 2009. Doctor indicates that claimant is able to occasionally lift ten pounds a day, stand and/or walk at least two hours in an eight-hour workday, and sit less than six hours in an eight-hour workday. Claimant is able to perform grasping, reaching, and fine manipulation with both upper extremities. She is able to operate foot and leg controls with both lower extremities. Doctor notes limitations in comprehension, memory, and sustained concentration. Doctor does not indicate any quantifying information regarding the level of claimant's mental limitation. Department Exhibit A, pgs 14-15.

(14) February 20, 2009, claimant was admitted to hospital following seizure. CT scan revealed no acute intracranial abnormality. Claimant was discharged that same date. Department Exhibit A, pgs 16-35.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social

functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is 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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has depression and history of polysubstance abuse. Claimant declined counseling services for her depression, she is prescribed medication by her physician and is reported to be stable on medication. The objective medical evidence of record indicates that claimant has had one or more seizures. She is reported to be stable on anti seizure medication. The record indicates that claimant has cervical stenosis. No objective medical evidence was submitted to corroborate this diagnosis. Claimant's physician opines that for a period of approximately six months she should limit lifting, pushing/pulling, and sitting. Exam by neurologist approximately one month later revealed a basically unremarkable physical and mental status exam. Neurologist did not note unsteady gait. There is no note of impaired comprehension, memory, or sustained concentration. Finding of Fact 10-14.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as an LPN. See discussion at Step 2 above. Finding of Fact 9-14.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-14.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities. Considering claimant's Vocational Profile (younger individual, high school graduate or more, and history of skilled work, skills not transferable) and relying on Vocational Rule 202.21, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied her application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 4, 2010

Date Mailed: January 8, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JAB/db

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