

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: 2010-7355

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 5, 2010

Ingham 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, an in-person hearing was held on January 5, 2010. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has 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) January 27, 2009, claimant applied for MA and retroactive MA.
- (2) June 18, 2009, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

- (3) July 1, 2009, the department sent claimant written notice that the application was denied.

(4) September 28, 2009, the department received claimant's timely request for hearing.

(5) December 1, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) January 5, 2010, the in-person hearing was held.

(7) Claimant asserts disability based on impairments caused by a bad back, surgery on neck, carpal tunnel syndrome, Hepatitis C, lupus, COPD, and asthma.

(8) Claimant testified at hearing. Claimant is 48 years old, 5' 4" tall, and weighs 113 pounds. Claimant completed ninth grade and a GED. 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 a retail cashier and stock person, custodian, and dental assistant.

(10) December 31, 2008, claimant underwent a CT scan of the cervical spine that revealed no acute findings. Department Exhibit A, Report, 12-31-08. On about February 10, 2009, claimant presented to Emergency Room (ER) complaining of shortness of breath with minimal activity. Objective medical testing was conducted that revealed the following: normal EKG; normal sinus rhythm; no acute disease in chest; normal lung markings present; normal CT of the head; no acute changes. Physical exam revealed, in pertinent part normal heart rate and rhythm, normal heart sounds, pulses normal; no respiratory distress, breath sounds normal, chest nontender; abdomen soft and nontender; back is normal with no CVA tenderness; extremities exhibit normal range of motion, no lower extremity edema; oriented X 3, no motor deficit, no sensory deficit, reflexes normal. Department Exhibit A, Report, 2-10-09.

(11) April 1, 2009, claimant underwent an independent psychiatric/psychological assessment and a narrative report was prepared that indicates AXIS I diagnoses of general anxiety disorder, moderate to severe; major depressive disorder, recurrent;, moderate; amphetamine dependence, sustained full remission; and nicotine dependence. GAF was assessed at 51. Claimant was cooperative during assessment, very verbal, friendly, and engaged. Claimant cried throughout interview. Gait was slow and posture was slouched. She was out of breath walking a short distance. Grooming and hygiene were fair. Claimant appeared to have contact with reality. Her speed of motor activity was normal. She reported being dependent on some others for her basic needs. Stream of mental activity was logical and organized. Claimant denied having hallucinations or delusions. She denied being persecuted. She denied others controlled her thoughts or that she had any unusual powers. She did report feeling worthless, hopeless, and guilty. She reported sympatric difficulties including pain, sleep problems, difficulties with appetite, fatigue and weakness. Claimant was oriented X 3. Memory, fund of information, calculation, abstract thinking, and judgment were impaired. Department Exhibit A, pgs 4-8.

(12) April 15, 2009, claimant underwent a physical exam by a neurologist and a narrative report was prepared that indicates in pertinent part, cranial nerves 2-12 intact; atrophy of both thenar eminences in her hands; manual muscle testing normal; no muscle spasm; JAMAR 40 right and 80 left, right handed; sensory intact to touch, vibration, and position sense; straight leg raise negative bilaterally in seated position; cerebellar tone normal; rapid alternating movement intact; no tremor or ataxia; fine and gross motor coordination intact for ADL's; independent ambulating; deep tendon reflexes equal with no signs of clonus; normal range of motion to all areas including cervical spine; equal swing and stance; client could step climb; heel and toe walk; and full squat without assistance. Doctor's conclusion is that claimant has chronic pain in her cervical spine and right arm. She had failed orthopedic surgery. There is a possibility that the right hand pain is carpal tunnel syndrome since there is so much atrophy in the thenar eminences in the hands. This is the same dermatomes at C6. There is bilateral atrophy in the intrinsic muscles of her thumbs consistent with advanced carpal tunnel syndrome. She is able to grasp but her hand would fatigue with repetitive grabbing and in pincher grasp. No signs of presyncope due to

aortic regurgitation. Claimant is able to do all orthopedic maneuvers but would complain of cervical pain with prolonged neck flexion and turning. Department Exhibit A, pgs 10-39.

### 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, anxiety, and nicotine dependence. Claimant was oriented X 3 with logical and organized stream of mental activity. Cognitive functions were impaired. GAF was assessed at 51, indicative of serious symptoms or difficulties. Claimant is post surgery on the cervical spine. She has full range of motion in the cervical spine but pain with prolonged flexion and rotation. Claimant has muscle atrophy, reduced strength, and pain in her right hand that is possibly due to carpal tunnel syndrome. Neurologist opines claimant would have weakness with repetitive grasping and pinching. At hearing, claimant testified to impairments caused by Hepatitis C,

lupus, COPD, and asthma. No objective medical evidence was submitted to the record to establish severe impairments due to these conditions. Finding of Fact 10-12; DSM IV, 1994 R.

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 a retail cashier and stock person, custodian, and dental assistant.

At Step 4, the objective medical evidence of record appears to indicate that due to atrophy and weakness in claimant's dominant right hand, claimant would have difficulty performing the duties required by these jobs. See discussion at Step 2 above. Finding of Fact 9-12.

At Step 4, the objective medical evidence is sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more, from engaging in a range of duties required by claimant's past relevant employment. Therefore, claimant is not 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 10-12.

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 that do not require

repetitive grabbing or pinching. Considering claimant's Vocational Profile (younger individual, limited education, history of unskilled work) and relying on Vocational Rule 202.17, 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 claimant's 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: March 3, 2010

Date Mailed: March 3, 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.

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