

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: 2010-7571
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 12, 2010
Macomb 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 12, 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 May 11, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and Retroactive Medical Assistance benefits alleging disability.

(2) On September 8, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 14, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On October 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 4, 2009, the State Hearing Review Team again denied claimant's application stating: claimant is capable of performing other work in the form of un-skilled work per 20 CFR 416.968(a).

(6) Claimant is a 44-year-old woman whose birth date is [REDACTED]. Claimant is 5'3" tall and weighs 185 pounds. Claimant recently gained 40 pounds. Claimant has a GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant alleges as disabling impairments: bipolar disorder, knee problems, and a bad back.

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 August 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Sierra Medical group psychiatric report dated August 8, 2009 indicates that the claimant had good contact with reality. Her insight was fair. She was relaxed. She had increased motivation and she had low self-esteem. She had a tendency to minimize symptoms. She 5'2" tall and weighed 190 pounds. She said she gained about 40 pounds in the last one year because of inactivity and medication. She was fairly dressed and fairly groomed. She had decreased eye contact. Gait was slow but normal. Her stream of mental activity was spontaneous and circumstantial but organized with no pressure of speech. Her mental train of thought content: she denied any hallucinations or paranoia. She sometimes sees some shadows. She feels that life is worthless and useless and has no plan or attempt. She has mood swings as described, primarily depressed moods. She has no gross delusions. She sleeps 5-6 hours with medication. She has back pain and feels tired. Her emotional reaction is that she is depressed, anxious and friendly and her affect was blunt. She was alert and oriented to time, person and place. She was able to recall 2 digits out of 5 forwards and 2 out of 5 backwards. The claimant was able to recall 2 of 3 objects after a few minutes. When asked to name the past few presidents, she stated Obama, Bush and Clinton. The claimant knew her date of birth. When asked to name 5 large cities, the claimant stated Detroit, Chicago and Miami. The claimant was able to name famous people. In her calculations: $5+4=9$, $6*7=42$. In her abstract thinking, when asked to interpret the proverb "The grass is greener on the other

side” and she stated, I don’t know. When asked to interpret the proverb”Don’t cry over spilled milk” she stated, don’t spill milk. When asked the similarities and differences between a bush and a tree the claimant stated I don’t know. When asked what the claimant would do if she found a stamped addressed envelope, she said put it in a mail box. Claimant had no head injuries or seizures and her GAF was 65 and her prognosis was fair. She was diagnosed with bi-polar disorder, depressed type chronic, stable with medication, panic disorder and lower back pain, knee pain and arthritis. (pp22-25)

An August 6, 2009 physical examination report indicates that claimant was well developed, well-nourished, obese female and no acute distress. She was awake, alert and oriented x3. Her height was 5’2” and weighed 190 pounds. Her pulse was 84, her respiratory rate was 16, blood pressure 130/85, visual acuity without glasses in the right eye was 20/30 and in the left eye 20/25. Her HEENT was normocephalic/atraumatic. Pupils were equal round and reactive to light. Extraocular muscles intact. Sclera non-icteric. Oropharynx clear without any lesion. Her neck was supple and no JVD noted, no bruit and no thyromegaly. The respiratory system, her chest was rhonchus bilaterally. Bronchial breathing. Hyperinflation noted. Distant breath sounds, typical of COPD. However equal expansion bilaterally. No retractions or accessory muscle usage. In the cardiovascular area there was regular rate and rhythm. NO rubs, no murmurs or gallops. In the gastrointestinal area the abdomen was soft and non-tender with no guarding or rebound. No palpable masses and organomegaly. The claimant has normal gait and stance. She managed to squat and recover with pain in the left knee, limited squatting to about 50%. In her neurologic area, generally the claimant was alert, awake and oriented x3. Cranial nerves 2-12 were intact. Sensory functions intact to sharp and dull gross testing. Motor examination reveals fair muscle tone without flaccidity, spasticity or paralysis. The medical

source statement indicated that based upon the examination, the claimant would have difficulty working 8 hours a day. She had severe restrictions for standing secondary to severe spasms in the back and likely degenerative joint disease effects the lumbosacral region. Walking beyond one block is also limited. She had no limitations for gripping or manipulations. Pushing and pulling was satisfactory. The claimant has no limitations for climbing stairs, but should probably not climb ropes, ladders and scaffolding because of the lumbar spasm and left knee pain and swelling. The impression was Osteoarthritis and spinal disorder, she has severe stiffness in the back. There was no evidence of disc prolapse. She ambulated well without any ambulation aid and had no orthotics. The squatting was limited secondary to left knee range of motion and pain. She managed to get on and off the examination table without difficulties. Straight leg raising was satisfactory. The range of motion of the back was significantly reduced. She does not have asthma but she is a heavy smoker and has shortness of breath. Pulmonary function tests showed mild obstruction. There were no other significant findings. (pp 19-20)

A medical examination report in the file indicates that claimant was normal in all examination area, except she had poor eye contact, concentration problems, and depressed expression. In her respiratory system she had prolonged expiratory phase and her clinical impression is that she is deteriorating and could never return to work. She was limited to occasionally picking up less than 10 pounds, but could not stand, walk or sit for 2 hours and couldn't do simple reaching, pushing and pulling and fine manipulating but could simply grasp with both hands stated the family practice doctor, June 22, 2009.

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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant does have some problems with her back. 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations resulting from her reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment.

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).

Claimant was able to answer all the questions at the hearing. Claimant was oriented x3 and was responsive to all the questions. 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 prior work was a dental receptionist and as a licensed cosmetologist for 21 years. This Administrative Law Judge finds that there is insufficient medical objective medical 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).

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).

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. Claimant testified on the record that she lives with her parents in a house and is single and has a 17 year old daughter who stays with her dad. Claimant testified that receives \$362 per week in unemployment compensation benefits. In order to be eligible for unemployment compensation benefits, a person must be monetarily eligible, they must be totally or partially unemployed and they must have an

approvable job separation and must meet the weekly requirements, which includes being physically and mentally able to work, being available for and seeking work and filing weekly claims for benefits on a timely basis. In the instant case, if claimant's receiving unemployment compensation benefits she is basically stating that for legal purposes that she is available and able to work. Claimant testified on the record that she does have a driver's license and she drives 2 times per week to friends' house and to the grocery store. She does cook 2 times per week and cooks things like enchilada's, hamburgers, and spaghetti. Claimant grocery shops every two weeks with no help and she cleans her home and does vacuuming, cleaning the tub, dishes and laundry. Claimant testified that she can stand for an hour at a time and can sit for 2 hours at a time and she can walk around the store. Claimant testified that she cannot squat but she can bend at the waist, shower and dress herself, tie her shoes and touch her toes. Claimant testified that she walk about 100 yards. Claimant testified that she is right handed and has carpal tunnel syndrome and that she wears orthotics on her feet. Claimant testified the heaviest weight she can carry is 25 pounds. Claimant has testified that she should be able to perform light work even with her impairments. Claimant also testified that her level of pain on a scale from 1-10 without medication is a 7 and with medication is a 3-4. 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. Claimant did testify that she does receive 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 44), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

Claimant continues to smoke cigarettes and smokes approximately a pack of cigarettes per day.

Claimant's doctor has told her to quit smoking and she is not in a smoking cessation program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

This Administrative Law Judge finds that claimant is not in compliance with a treatment program.

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. PEM, 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: April 26, 2010

Date Mailed: April 27, 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

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