

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: 2006-11586

Issue No: 4031, 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 7, 2006

Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith by telephone conference on August 7, 2006, pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of a evidence in the record including the recording of the actual hearing. The Claimant was present and testified. Brenda Hodson, FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

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

1. Claimant filed for SDA and MA on December 28, 2005 and February 2, 2006
2. Claimant is 5'4" tall and weighs 173 pounds.
3. Claimant is right handed.
4. Claimant is 42 years of age.
5. Claimant's impairments have been medically diagnosed as depression, lumbar disc bulge/herniation at L5-S1, carpal tunnel syndrome, and previously tendon replaced in right hand.
6. Claimant's physical symptoms are neck pain and stiffness, lower back pain, muscle cramps and numbness in right 2nd and 5th fingers.
7. Claimant's mental symptoms are memory impairment, poor concentration, anxiety attacks, crying spells, fear of crowds, confusion, nervousness, weight gain, sleeping a lot, fatigue, guilt feelings, paranoia, auditory hallucinations and poor self esteem.
8. Claimant takes the following prescriptions:
 - a) Valium (for nerves)
 - b) Seroquel (sleeping pill)
 - c) Vicodin
 - d) Methadone
 - e) Neurotin
 - f) HBP meds
 - g) Water pills
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 12th grade education.
11. Claimant is able to read/write and perform basic math skills. Claimant testified, however that she is not good at math at all (takes her a minute to add/subtract, worse on multiplication and division).
12. Claimant last worked 2001 doing automotive factory work. Physical requirements included lifting up to 40 lbs., and a lot of walking. Claimant left the job due to her injuries.
13. Claimant has prior employment experience as a telemarketer which was a sit-down job.

14. Claimant testified the following physical limitations:
 - Sitting: 5 min. leaning to one side.
 - Stand: 5-10 min.
 - Walk: 1-2 blocks
 - Bend/stoop – No
 - Lift: Claimant has problems with ½ gallon of milk.
 - Grip/grasp – Yes b/c of tingling in hands. Claimant will drop things.
15. Claimant is able to make herself sandwiches. She does not grocery shop (avoids being around people), clean or cook anything major.
16. The Department testified that Claimant was sitting on one hip only in the chair, leaning over.
17. The Department found that Claimant was not disabled and denied Claimant's application on March 20, 2006.
18. The Department received Claimant's request for hearing on March 23, 2005.
19. At the hearing, the Department was ordered to obtain a DHS 49D&E from the treating doctors, progress notes and ER records from [REDACTED] ER as well as schedule an internist and psychiatric IME for Claimant. Only the DHS 49 was submitted.
20. Medical records examined are as follows, in part:

[REDACTED] State Hearing Review Team Decision

Record of [REDACTED] indicated the Claimant appeared to be in pain. The pain was reported to have pain intensity out of proportion to patient's general appearance. She demonstrated poor effort towards the exam with grimacing and guarded movements.

Her physical condition would make heavy lifting difficult and fingering on the right would be limited. The claimant retains the physical residual functional capacity to perform unskilled light work. The claimant's past work was unskilled light work. Therefore, the claimant retains the capacity to perform her past relevant work.

[REDACTED] Medical Exam Report (Exhibit 2, p. 1)

DX: Backache, headaches, cervicgia, chronic pain syndrome
PHYSICAL EXAM: Cervical ROM decreased & painful. Tender without erythema. Straight leg raise negative, lumbar muscle spasm, tender lumbar & sacral vertebrae. Right three middle fingers with decreased sensation. EMG shows mild R carpal tunnel syndrome.

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: Lifting – occasionally less than 10 lbs., stand/walk less than 2 hours in 8 hour day. Limited reaching/pulling

██████████ MRI Spinal Cord (Exhibit 2, p. 3)

Mild lumbar degenerative change with small disc bulge/herniation at L5-S1 slightly eccentric to the left.

██████████ Orthopaedic Specialists (Exhibit 2, p. 4)

She's had an EMG which shows a very, very mild right carpal tunnel syndrome. I would not necessarily encourage surgical intervention for that.

██████████ Dr. Report (Exhibit 2, p. 6-7)

Decreased range of motion, joint pain (neck & bilateral shoulders, right hand pain, bilateral knee pain), low back pain, muscle cramps and myalgia. 2nd & 5th finger paralysis. Cervical range of motion decreased and movements painful. Tenderness over lumbar vertebra and tenderness over sacral vertebra, paraspinous muscle spasm.

Dr. reports (Exhibit 1, pp. 15-61)

██████████ - Pt appears to be in pain. Reported pain intensity is out of proportion to patient's general appearance. Displays poor effort towards exam. Grimacing and guarded movements. Neck mildly tender and decreased range of motion.

██████████ – positive UDS for cocaine but she denies use.

██████████ – Anxiety, depression, fatigue/loss of energy, social isolation and suicidal ideation

██████████ – Major depressive affective disorder, recurrent episode. Present – anger, anhedonia, depression, fatigue/loss of energy, insomnia, poor concentration, poor self-esteem and suicidal ideation.

██████████ – Paraspinous muscle spasm. Tenderness over lumbar vertebra and sacra vertebra.

██████████ – progressive LBP with right radiculopathy.

Orthopedic Doctor Reports (Exhibit 1, p. 63)

██████████ - Positive Tinel's at both wrist. MRI shows an isolated degenerative disc at L5-S1 with an annular tear.

IMPRESSION: Depression, chronic low back pain. I think that her depression is contributing significantly to her overall symptomatology complex. She certainly does have an isolated degenerative disc which may be also an organic cause of her back pain.

██████ – ER Room (Exhibit 1, pp. 78-82)

Intake in ER after assault, aggravation of back pain - Anytime I touch her low back she complains of pain; however, when you asked her to sit up and move around she did not have any problems with this.

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 400.1 *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).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, the Claimant last worked in 2005. Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In the subject case, Claimant last worked in 2001. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples 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)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence showing a diagnosis of chronic pain syndrome, lumbar disc bulge/herniation at L5-S1, mild carpal tunnel syndrome and depression. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant’s medical record will not

support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.04 *Disorders of the Spine* was reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting chronic pain syndrome, disc bulge/herniation at L5-S1, mild right carpal tunnel syndrome, 2nd & 5th finger paralysis and depression. Based on Claimant's physical limitations as set forth above in the DHS 49 Medical Exam, the undersigned finds the Claimant currently limited to sedentary work. Claimant's prior occupations include auto factory and foundry work which is considered light in exertional level. Claimant is, therefore, unable to return to those past occupations. Claimant also has experience as a telemarketer which is a sedentary unskilled occupation. Claimant would be able to return to

said sedentary occupation as a telemarketer. Claimant also testified to a diagnosis of bipolar disorder and depression. However, there is no medical evidence, other than Claimant's testimony, to support mental limitations. According, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fourth step as Claimant is able to do past work.

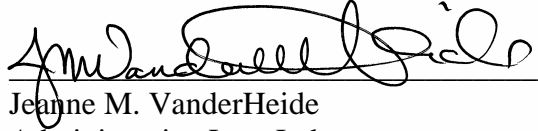
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is insufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "not disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "not disabled" for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department's determination in this matter is AFFIRMED.


Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/10/09

Date Mailed: 12/11/09

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.

JV/dj

cc:

A large black rectangular redaction box covering several lines of text in the cc field.