

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: 2006-17609
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 10, 2006
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on May 10, 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. At the hearing, the Claimant was present and testified. LaShonda Warfield, MCW, 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") program.

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 MA & SDA on October 5, 2005.
2. Claimant's impairments are osteoarthritis, diabetes, torn rotator cuff right shoulder and blurred vision in both eyes.
3. Claimant's physical symptoms are back pain, shoulder pain, dizziness and blurry vision. Claimant's mental symptoms are forgetfulness.
4. Claimant uses a cane to ambulate.
5. Claimant is 5'4" tall and weighs 185 pounds.
6. Claimant testified to the following physical limitations:
 - Sitting – 2 hours
 - Standing – 10 min.
 - walking – 1 block
 - Lifting – 3 lbs.
 - Difficulty climbing stairs
 - No gripping/grasping with Right arm.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months. Claimant testified that the impairments have worsened over the last 4 years.
8. Claimant is 59 years of age.
9. Claimant graduated from high school and attended some college courses but never obtained any degrees.
10. Claimant was last employed in July of 2005 as a security guard. The job required walking for an hour a day but no lifting.
11. Claimant has employment experience as follows:
 - a) Receptionist – lasted a few months as was placed through a temporary agency.
 - b) Underwriter for ██████ – held this job for 27 years.
12. Claimant testified that she performs household activities such as preparing meals for herself. Claimant testified that she cannot stand for any length of time to wash dishes. Claimant does not drive, but she could if she had too.
13. The Department found that Claimant was not disabled and denied Claimant's application on 1/20/06.
14. Medical records examined are as follows:

██████ – Medical Exam Report (Exhibit 1, pp. 5-6)

HX of Impairments: Complaints of lower back pain and having hard time to stand. Also complains of Rt knee pain.

DX: Lower back and right knee pain secondary to poss. arthritis.

PHYSICAL LIMITATIONS: Lifting 10 lbs., standing/walking less than 2 hrs/day, sitting 6 hours per day.

██████ Internist IME (Exhibit 1, pp. 9-12)

COMPLAINTS: Headaches, dizziness, bad eyes, frequent urination, pain all over due to arthritis – worse in low back and right knee, inability to raise right arm above head level.

PHYSICAL EXAM: Rt knee is stiff, flexion and extension were 80 degrees. Lower back movements are restricted to about 60% within normal range. Tenderness present over lumbar area.

DX: Hypertension, diabetes mellitus not well controlled, impaired vision – needs glasses. Status post injury and surgery to the left ankle. Physical medicine specialist recommended for lower back, right knee and left ankle.

X-RAY LUMBAR SPINE: Degenerative changes of the low lumbar spine with degenerative disc disease at L4-S1. Degenerative changes at the sacroiliac joints.

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 CFR416.905

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). 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 this case, under the first step, the Claimant last worked in 2005. 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 from medical providers showing diabetes, degenerative disc disease with possibility of arthritis, hypertension and

decreased vision. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by her physicians. It should be noted that there is no standard accepted test for a diagnosis of osteoarthritis and often times is shown by x-rays alone.

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 you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant has been placed on physical limitations by her treating physician. Taking into consideration Claimant's testimony about her physical limitations, this Administrative Law Judge has determined that Claimant has restrictions of lifting less than 10 lbs. occasionally with left arm only and limited (less than 2 hours/day) walking and standing.

Claimant's prior employment as a security guard, based on Claimant's testimony of her job duties would have been considered unskilled and light in exertional level as it required minimal lifting but walking up to an hour at a time during the day. Due to the walking required, Claimant would be unable to return to this position.

Claimant's prior experience as a receptionist would be sedentary and unskilled and as a claims examiner sedentary and semi-skilled. Claimant is unable to lift anything with her right arm, nor can she see well with blurry vision. Claimant would, therefore, be restricted to less than sedentary work and would be unable to return to any of the above referenced occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other Work

In the fifth 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 other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) "Residual function capacity," defined simply as "what you can still do despite your limitations," 20 CFR 416.945.

- (2) Age, education and work experience, and
- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 829 (1987).

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally below the limits of sedentary as sedentary work requires "good use of hands and fingers for repetitive hand-finger actions". 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

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.

Claimant at fifty-nine years is considered an *individual of advanced age*; a category of individuals in age group (55+).

The adversity of function restrictions to sedentary work at advanced age for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work.

In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over) there must be very little, if any vocational adjustment required in terms of tools, work processes, work settings or the industry.

20 CFR 404, Subpart P, Appendix 2, Rule 201.00(d)&(f).

Considering Claimant's physical impairments of degenerative disc disease/osteoarthritis which is supported by physical examination findings of limited extension/flexion in knee, limited lower back movements to 60% of range, tenderness over lumbar area and x-ray findings of degenerative changes of the sacroiliac joints and the lumbar spine, in conjunction with Claimant's inability to lift her right arm and blurry/decreased vision, this Administrative Law Judge finds that Claimant's impairments render Claimant unable to do even sedentary work. Claimant is, therefore, disabled for the purposes of the programs. This decision is further supported by 20 CFR 404, Subpart P, Appendix 2, Rule 201.06 which indicates that an individual of advanced age who is a high school graduate or more with non transferable skills is considered disabled.

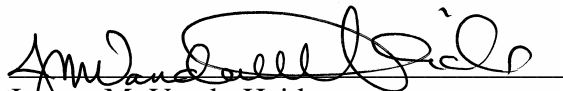
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of October 5, 2005.

Therefore the department is ordered to initiate a review of the application of September 5, 2005, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed December, 2010.



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

Date Signed: 12/11/09

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

2006-17609/JV

cc:

