

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: 2006-22527
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 14, 2007
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on June 14, 2007 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 evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. Also present for Claimant were [REDACTED]. Claimant was represented by [REDACTED]. Cheryl Pettway, 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") 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 April 10, 2006. Claimant requested MA and SDA retroactive to March 2006.
2. Claimant's impairments are arthritis, bilateral carpal tunnel syndrome, pneumonia, arterial fibrillation, hepatitis C, major depressive disorder, panic disorder with partial agoraphobia, and cognitive disorder.
3. Claimant's physical symptoms are pain in arms and legs, swelling in legs, dizziness, numbness and tingling in arms, itching arms, fatigue, anxiety attacks, panic attacks, decreased appetite, decreased concentration, sleep disturbances, hallucinations and suicidal thoughts.
4. Claimant uses a cane, wrist braces, an inhaler, and a walker.
5. Claimant is 5'5" tall and weighs 170 pounds.
6. Claimant testified to the following physical limitations:
 - Sitting – 1 hour
 - Standing – 15-20 min.
 - walking – ½ block
 - Lifting – less than 5 lbs.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 57 years of age.
9. Claimant completed 11th grade in high school.
10. Claimant was last employed March 23, 2006.
11. Claimant has employment experience as a housekeeper and as a cashier in a fast food restaurant

12. Claimant testified that she performs household activities such as cooking Sunday dinner, washing dishes and light cleaning such as dusting and some mopping.
13. Claimant testified that she requires help from her husband getting in and out of the bathtub.
14. The Department found that Claimant was not disabled and denied Claimant's application on 6/15/06.
15. Medical records examined are as follows:

████████████████████ Medical Exam, in part, (Exhibit A, pp. 1-2)

GENERAL: Unsteady gait. Patient uses walker at times for support.

PHYSICAL LIMITATIONS:

- Lifting – less than 10 lbs. occasionally
- Standing/walking – less than 2 hrs in 8 hr work day

████████████████████ Mental Status Evaluation, in part, (Exhibit A, pp. 3-14)

COMPLAINTS AND SYMPTOMS: Accompanying medical records indicate that patient was admitted to hospital on ██████████ and discharged ██████████ with diagnoses of de-conditioning secondary to pulmonary debility with post operative encephalopathy secondary to methicillin-resistant staphylococcus aureus and pseudomonas, vent-dependent respiratory failure secondary to hypoxia, GI bleed, anemia, colitis, thrombocytopenia, acute renal insufficiency, atrial fibrillation, Hepatitis C, hypertension, arthritis bilateral wrist, knee and ankles, carpal tunnel, GI prophylaxis.

DIAGNOSIS Major Depressive Disorder, chronic, severe with psychotic features, Panic Disorder with partial Agoraphobia, Cognitive Disorder appearing secondary to illnesses described in hospitalization in ██████████ Personality Changes appearing secondary to above, Alcohol Dependency.

SUMMARY AND IMPRESSIONS: She is not seen as able to handle financial matters and would need assistance from her

husband. She is seen as able to handle simple activities of daily living such as eating and brushing her teeth but is needing some help from husband with getting in and out of the shower and certain parts of dressing and is limited in lifting and reaching.

MENTAL RESIDUAL FUNCTION CAPACITY

ASSESSMENT: Markedly limited as follows:

1. The ability to remember locations and work like procedures
2. The ability to understand and remember detailed instructions.
3. The ability to carry out detailed instructions.
4. The ability to maintain attention and concentration for extended periods.
5. The ability to perform activities within a schedule, maintain regular attendance, and be punctual with customary tolerances.
6. The ability to sustain an ordinary routine without supervision.
7. The ability to work in coordination with or proximity to others without being distracted by them.
8. The ability to work in coordination with or proximity to others without being distracted by them.
9. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.
10. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
11. The ability to respond appropriately to change in the work setting.
12. The ability to set realistic goals or make plans independently of others.

[REDACTED], in part, (Exhibit A, pp. 15-17)

[REDACTED] (Exhibit 1, pp. 8-10)

[REDACTED], in part (Exhibit 1, pp. 2-7, 11-76, 79-89)

Patient admitted with atrial fibrillation and pneumonia. Cultures positive for MRSA and pseudomonas. She developed ventilator dependent respiratory failure.

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). In this case, under the first step, the Claimant last worked in March of 2006. 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 of arthritis, bilateral carpal tunnel syndrome, pneumonia, arterial fibrillation, hepatitis C, major depressive disorder, panic disorder with partial agoraphobia, and Cognitive disorder. Claimant

also testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by her physicians.

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 Listings 12.04 *Affective Disorder* and 1.01 *Musculoskeletal Disorders* were 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, this Administrative Law Judge has determined that Claimant is able to lift up to 10 lbs. occasionally and is limited to walking/standing less than 2 hours/day. In addition, claimant needs a walker for stabilization.

Claimant's prior employment, based on her testimony of job duties would have been considered unskilled and medium in exertional level as both housekeeper and cashier required lifting, and a significant portion of the day, standing. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned prior 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. 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-seven years is considered an individual of *advanced age*; a category of individuals age 55 and over. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render her capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of unskilled work, Claimant is disabled for the purposes of the programs per rule 201.04. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.4. There is no need to consider Claimant's mental capacity as she is disabled as a matter of law per the sedentary work table.

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 her 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 April 10, 2006.

Therefore the department is ORDERED to initiate a review of the application of April 10, 2006, 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 March of 2010.

/s/
Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith
Department of Human Services

Date Signed: 04/08/09

Date Mailed: 04/10/09

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.

2006-22527/JV

JV/dj

cc:

