

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: 2007-12878
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on March 3, 2008 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 on behalf of Claimant was [REDACTED] [REDACTED] represented Claimant's interests at the hearing. [REDACTED] 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 February 28, 2006, retroactive to November 2005.
2. Claimant's impairments are obesity and lower extremity edema. Claimant also testified that she has impairments of artery disease, cervical herniated disc, congestive heart disease, and under active thyroid.
3. Claimant's physical symptoms are upper and lower back pain, shortness of breath, leg pain, and difficulty walking.
4. Claimant is 5'3" tall and weighs 282 pounds.
5. Claimant testified to the following physical limitations:
 - Lifting up to 10 lbs.
 - Sitting – 1 hour
 - Standing – ½ - ¾ hour
 - Walking – 1 block
6. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
7. Claimant elevates her legs about an hour a day to reduce the swelling in her legs. Standing can irritate the swelling.
8. Claimant is 45 years of age.
9. Claimant completed the 10th grade in High School.
10. Claimant last worked in 2005.

11. Claimant has employment experience babysitting and providing aide type services to her mother.
12. Claimant testified that she performs household activities such as cooking, shopping, cleaning the home, washing dishes, and making the bed.
13. The Department found that Claimant was not disabled and denied Claimant's application on 7/7/06.
14. Medical records examined are as follows:

[REDACTED] Medical Examination Report, in part.

Physical Limitations:

- Lifting – less than 10 lbs.
- Standing – less than 2 hours in an 8 hour work day
- Very limited use of legs
- Patient uses a cane.

[REDACTED] in part

Patient presented with symptoms of diarrhea. Chronic edema of the lower extremities was noted.

[REDACTED] in part

Patient presented with left chest tightness and was admitted overnight. Noted history of chronic venous insufficiency versus pedal edema and congestive heart failure.

11/28/05 – Venous Duplex Scan of Lower Extremities showed the “visualized deep veins in both lower extremities are patent”. The long saphenous vein in both thighs are patent.

[REDACTED] in part

Physical Limitations: Lifting occasionally 20 lbs.

Impairments: Bilateral pedal edema
Cardiac pathology
Hypercholesterolemia

[REDACTED], in part

- Preserved left ventricular systolic function
- Normal valve configurations
- Mild right ventricular enlargement
- Normal Doppler flow study

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, 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 F2d 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 of some cardiac pathology, lower extremity edema and obesity along with physical limitations imposed by [REDACTED]. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. The undersigned finds that Claimant meets the requirements of a severe impairment with regards to the cardiac pathology, lower extremity edema, and obesity. It is necessary to continue to evaluate these impairments under step three.

The hearing record revealed that the record was left open in order to allow Claimant’s representative to provide records from [REDACTED] CT Scan results, and an updated 49. While [REDACTED] records and an updated Medical Examination were submitted, there was no medical evidence submitted other than Claimant’s testimony regarding thyroid problems or a cervical herniated disc. Therefore, the undersigned finds that the Claimant did not provide sufficient evidence to meet the severity requirement of the second step on the issues of thyroid disorder or herniated cervical disc and they are not considered in the following steps.

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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 4.02 *Chronic Heart Failure* was reviewed. In this matter, the medical records establish that Claimant has some history of cardiac pathology as she was admitted to [REDACTED] for chest pain. At that time, it was unclear whether her lower extremity edema was caused by venous insufficiency or pedal edema. A venous duplex scan did not show any abnormalities in the lower extremities although not everything could be visualized due to Claimant's weight. An echocardiogram performed on [REDACTED] showed preserved left ventricular systolic function and a normal Doppler flow study. Therefore, 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 physical impairment does not meet the intent or severity of the listings.

Given the Claimant's height of 5'3" and weight of 282 pounds, Claimant is considered morbidly obese after determining her BMI (Body Mass Index). Obesity is no longer considered a listing level impairment. See Social Security Ruling (SSR) 02-1p. However, Obesity can also be considered in determining whether the Claimant can do past relevant or other work. 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's previous employment was classified as unskilled, medium exertional work. Medium work requires lifting up to 50 lbs., frequent bending and stooping and a good deal of walking or standing. As [REDACTED] determined that Claimant has exertional limitations of occasionally lifting up to 10 lbs. and standing/walking less than 2 hours/day, Claimant is currently capable of doing only sedentary work, 20 CFR 416.967. Therefore, this Administrative Law Judge finds that Claimant is not able to perform her past work.

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 limited to sedentary work based on [REDACTED] Examination Report. 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 forty-five is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21. Claimant is able to perform household activities such as cooking, making the bed, cleaning, and washing the dishes. These activities indicate that Claimant is already doing sedentary type activities at home. While Claimant testified that she is limited in how long she can sit, this is not supported by the medical evidence. Furthermore, Claimant testified that she needs to keep her legs elevated, but only for 1 hour during the day. Claimant is limited to a job that is sedentary, primarily sitting with the ability to raise her legs intermittently during the day. Claimant is “not disabled” per Rule 201.18. It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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 her 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 upon the above findings of fact and conclusions of law, finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and IT IS ORDERED that the Department's decision in this matter is AFFIRMED.

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

Date Signed: 03/26/09

Date Mailed: 03/27/09

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

2007-12878/JV

cc:

