

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: 2007-12894

Issue No: 2009

Case No:

[REDACTED]

Load No:

Hearing Date:

December 3, 2007

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on December 3, 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. [REDACTED] Claimant's mother was also present. [REDACTED] was present and represented Claimant. [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 June 8, 2006. Claimant requested MA and SDA retroactive to May 2006.
2. Claimant's impairments are stroke with residual left sided weakness, sticky platelet syndrome, pulmonary embolism, obesity, severe recurrent depression and bipolar disorder.
3. Claimant's physical symptoms are chest pain, left sided weakness, loss of balance, weak left hand, chronic swelling in left leg and numbness.
4. Claimant is 5' 10" tall and weighs 300 pounds.
5. Claimant testified to the following physical limitations:
 - sitting ½ hr – 1 hr
 - standing – 15 min.
 - walking – 25 feet before Claimant's leg goes numb
 - no bending or stooping
 - lifting 10 lbs.
 - no gripping or grasping with left hand
6. Claimant keeps her leg elevated about 8 hours/day.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 45 years of age.
9. Claimant has two years of college education.
10. Claimant was last employed in August of 2000.
11. Claimant has employment experience as a chef which required lifting up to 60 lbs and standing for an 8 hour shift.

12. Claimant testified that she performs household activities such as cooking, shopping, vacuuming, doing dishes, making the bed, scrubbing surfaces, mopping and laundry.

13. The Department found that Claimant was not disabled and denied Claimant's application on 11/16/06.

14. Medical records examined are as follows:

[REDACTED], in part, (Exhibit D)

Physical Limitations imposed by Dr:

1. Lifting less than 10 lbs.
2. Standing/walking less than 2 hrs/8 hr work day
3. Cane needed for ambulation
4. Left sided weakness limits repetitive action
5. Mental limitations with comprehension, memory and sustained concentration
6. Help needed with most activities of daily living

[REDACTED]

Claimant was hospitalized on [REDACTED] for 5 days after a suicide attempt.

Diagnoses: Bipolar Disorder, depressed type, GAF 36

[REDACTED]
(Exhibits C, G)

HOSPITAL COURSE: The patient was hospitalized . . . with the diagnosis of (1) pulmonary embolism, (2) left lower extremity deep venous thrombosis quite extensive, (3) history of sticky platelet syndrome diagnosed several years ago, and (4) previous history of cerebrovascular accident . . .

[REDACTED] in part, and [REDACTED]
[REDACTED] (Exhibit H)

Diagnosis: Major Depressive Disorder – Recurrent, severe

Marked Limitations in the following areas:

- the ability to understand and remember detailed instructions,
- The ability to carry out detailed instructions,
- The ability to maintain attention and concentration for extended periods,
- The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerance,
- The ability to work in coordination with or proximity to others without being distracted by them,
- The ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.
- The ability to interact appropriately with the general public,
- The ability to accept instructions and respond appropriately to criticism from supervisors,
- The ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes.
- That ability to set realistic goals or make plans independently of others.

[REDACTED] in part

Patient admitted with complaints of acute chest pain

[REDACTED] (Exhibit 1)

[REDACTED] (Exhibit 1, pp. 51-55)

[REDACTED] (Exhibit 1, pp. 105-107)

[REDACTED] (Exhibit 1, pp. 127-150)

[REDACTED] (Exhibit 1, pp. 121-125)

Diagnosis Bipolar disorder

15. Other records examined:



[Claimant] generally demonstrated acceptable quality and productivity for the tasks, however, because she did not consistently demonstrate acceptable core work behaviors, community employment is not being recommended at this time.

It is recommended that [Claimant] seek a Medical Evaluation to identify if there are any treatments that can be sought to assist her in demonstrating improved physical stamina.

It is recommended that [Claimant] participate in a three-week Work Adjustment Program to assist her to demonstrate improved core work behaviors.

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 as a chef in 2000. 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 hospital admissions showing diagnoses of pulmonary embolism, deep vein thrombosis, obesity, severe depression, and bipolar disorder. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by Claimant’s 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 Listing 12.0 *Mental Disorders* and 4.0 *Cardiovascular Impairments* 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 physical impairments do not meet the intent or severity of the listings.

Claimant, at a height of 5'10" and weight of 300 pounds, is considered mildly 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.

██████████ determined that Claimant was unable to stand for more than two hours during an eight hour work day. Furthermore, Claimant is limited to lifting less than 10 pounds occasionally, needs a cane for ambulation and has left sided weakness which limits repetitive

actions. Claimant also testified to similar limitations with the additional need to elevate her leg above heart level for eight hours per day. These limitations take into consideration, Claimant's obesity. These restrictions classify Claimant as capable of sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a). A chef performs semi-skilled work that is classified as light exertion. It is the finding of the undersigned, based upon the medical data that Claimant cannot return to her past relevant 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 employment that requires only the use of the right hand with a sit/stand option. This decision is based on [REDACTED] physical functional evaluation, [REDACTED] and Plaintiff's testimony that she is limited to sitting for ½-1 hour, standing for 15 minutes, walking only 25 feet before her leg goes numb, no bending or stooping, lifting only up to 10 lbs. and no gripping or grasping in her left hand.

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. Considering only Claimant's medical limitations, Claimant would be capable of working at a one-handed sedentary position, semi-skilled or unskilled, where there was a sit/stand option and the ability to keep one leg elevated for most of the work day. Whether any such job exists is a moot point as Claimant is disabled from doing any job based on the combination of her mental and physical impairments.

Claimant is suffering from recurrent severe major depressive disorder and bipolar disorder and was admitted at least three times in the past few years for suicide attempts. Following a suicide attempt [REDACTED], Claimant was assigned a GAF of 36 which translates to "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." In addition, the 2007 Psychiatric evaluation found marked limitations in several areas, including understanding, remembering and carrying out detailed instructions and getting along with co-workers or getting along with the general public. Given Claimant's combination of mental and physical impairments, there are no jobs in the national economy which Claimant could perform.

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. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

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 July 31, 2006.

Therefore the department is ORDERED to initiate a review of the application of June 8, 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 4, 2010.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith

Date Signed: 03/11/09

Date Mailed: 03/11/09

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:

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