

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No. 2007-13623

Issue No. 2009; 4031

Case No:

Load No.

Hearing Date:

July 23, 2007

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Claimant's request for a hearing. After due notice, the Claimant and her friend ██████████ appeared at a hearing held on July 23, 2007 at the Department of Human Services (Department) in Wayne County.

The closure date was waived to obtain additional medical information. An Interim Order was issued for Independent Medical exam; the medical records were not received; and the record closed. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

- (1) On January 4, 2007 the Claimant applied for MA-P and SDA.
- (2) On March 9, 2007 the Department denied the application; and on June 25, 2007 the SHRT denied the application finding the medical records supported an improvement in condition with more treatment compliance and an impairment lacking in duration.
- (3) On March 22, 2007 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED] and the Claimant is forty-two years of age.
- (5) Claimant completed grade 10 and GED and one year of college; and can read and write English and perform basic math.
- (6) Claimant last worked in February 2007 as a dental assistant for twelve years and prior was a waitress.
- (7) Claimant has alleged a medical history of right arm limitations in movement due to rotator cuff tear with pain, numbness of fingers and burning at the shoulder; and depression with hospitalization for suicidal ideation in 2006.
- (8) December 2006, in part:

HISTORY: Arrived alone by private car. Presented with increased right shoulder pain, swelling and redness following arthroscopy last week. Medications: Zoloft, Lorcet, Prednisone, and Zantac.
PRINCIPAL DIAGNOSIS: Right shoulder cellulitis.

HOSPITAL COURSE: Physical Examination: [All within normal limits.] Except pain with range of motion right shoulder, tender to palpation, distal pulses normal. Treatment with IV antibiotics. MRI

showed no signs of joint infection was without joint fluid and had mild deltoid myositis. Improvement was dramatic after IV antibiotics and anti-inflammatories. Was discharged after four days to home with oral antibiotics and pain medication; and to take home medication. Follow up with [REDACTED] Wear sling for comfort. [REDACTED] Department Exhibit (DE) 1, pp. 13-55.

(9) January 2007, in part:

CURRENT DIAGNOSIS: Rotator Cuff Syndrome.

HT 5'5", WT 170.

PHYSICAL LIMITATIONS: No work December 2006 to March 2007. Limitations expected to last 90 days. Recovering post surgery. Can meet own needs in home. [REDACTED]. Board Certified.

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.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not performing SGA since February 2007. This date was after the date of surgery December 2006 and after [REDACTED] January 2007 examination. But because of her sworn testimony of no work after February 2007 the Claimant is not disqualified for MA at step one in the evaluation process.

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 F2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented medical evidence of a December 2007 arthroscopy surgery to the right shoulder; and followed by a post operative cellulites treated in December 2006. In January 2007, [REDACTED] opined the Claimant could return to work in March 2007. There were no medical records after January 2007 and the hearing was in July 2007. There were no medical records establishing mental impairments affecting basic work activities.

There are no medical records noting physical impairments/limitations. The medical evidence has no established that Claimant has a mental/physical impairment that has more than a minimal effect on basic work activities. The medical records have not established the impairments have lasted continuously for 12 months.

Based on lack of medical evidence that the Claimant is unable to perform basic work activities after March 2007, the undersigned finds the Claimant condition is not severe within the meaning of 20 CFR 416.920(c).

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not

disabled. We will not consider your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 916.920a(5)(c).

It is the finding of the undersigned, based upon the medical data and hearing record, that the Claimant is “not disabled” at step two because the Claimant does not have medical documentation of physical or mental impairments that are severe enough to prevent basic work activities; further review of the claim is not necessary.

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 impairments meet the disability requirements under SSI disability standards. This Administrative Law Judge finds the Claimant is “not disabled” for purposes of the SDA 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.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: February 18, 2009

Date Mailed: February 20, 2009

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 receipt 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.

cc: C. Biggs
Wayne County DHS (Dist #19)
M. Best
B. Dixon
J. Rogers
J. Richardson
J. R. Ellison
Administrative Hearings (2)