

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.: 2007-14455
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 10, 2007
Wayne County DHS (76)

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, a hearing was held on September 10, 2007. The Claimant, her [REDACTED] appeared at the Department of Human Service (Department) in Wayne County, [REDACTED]

The record was left open to obtain additional medical information; and an Interim Order was issued for additional medical evidence and independent medical consultation. No new evidence was received; and the record closed. The matter is now before the undersigned for a final decision.

ISSUE

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

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 10, 2007 the Claimant applied for MA-P and SDA; and a previous disability application filed June 13, 2006 was denied.
- (2) On March 26, 2007 the Department denied the application; on June 22, 2007 the SHRT denied the application finding the medical records indicated an ability to perform light unskilled work one-handed.
- (3) On March 30, 2007 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is June 13, 1967; and Claimant is thirty-nine years of age.
- (5) Claimant completed grade 12 and four years of college with a degree in finance and business administration; and can read and write English and perform basic math.
- (6) Claimant was last employed 2005 as controller for a recycling business; and previously was a bookkeeper, human resource manager, payroll manger and accountant.
- (7) Claimant has alleged a medical history of decreased memory due to a lifetime seizure disorder treated with medication, right/left sciatic pain, fibromyalgia, muscle spasms, irritable bowel syndrome (IBS), TMJ, daily migraines, depression and post traumatic stress disorder (PTSD).

- (8) January 2007, in part:

CURRENT DIAGNOSIS: Some depression, TMJ, fibromyalgia, migraines.

HT 64", WT 199, BP 114/60.

NORMAL EXAMINATION AREAS: HEENT; Respiratory; Cardiovascular, Abdominal, Neuro.

FINDINGS: General: limping, moving in pain. Musculoskeletal: decreased range of motion all joints. Mental: anxious, crying.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited. Lifting/carrying [Criteria given was not reliable due to writing over]; stand and/or walk less than 2 hours in 8 hour day; sit about 6 hours in 8 hour day; no assistive devices are needed; use of right hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own need in home.

MENTAL LIMITATIONS: limited in concentration, memory, sustained concentration. Medications: [REDACTED]

[REDACTED]
1, pp. 21-22.

(9) February 2007, in part:

INTERNAL MEDICNE EXAMINATION: HISTORY: Five years ago pain started in neck/back and had PT without relief. Claimant can only sit for one hour; and stands leaning against the wall or lies down. Able to complete ADLs independently with help to dress. No cooking or housework. Cannot go up/down stairs or drive, cannot concentrate and cries most of time. Sees therapist for postpartum depression from a stillbirth in 2001. Denies history of seizures and epilepsy.

PHYSICAL EXAMINATION: Very depressed. HT: 64", WT 202 POUNDS, BO 110/80. Vision with glasses 20/20 right eye, 20/25 left eye. HEENT, Neck, Heart, Lungs, Abdomen, Extremities/Musculoskeletal: [All within normal limits.] Except: alopecia from nervousness. Experiencing pain all over with difficulty getting up, getting on/off the exam table and taking on/off her clothes; and neck stiffness. Range of motion limits due to pain in cervical and lumbar spine. Range of motion pain t left shoulder. Unable to do range of motion of hips. Can not do heel/toe walk or SLR. Clinical exam indicates need for walking aid. Gait unsteady. Grip strength 5/5 upper extremities. Could not bend, left shoulder painful with range of motion limits. Not able to stand on one leg. Reflexes were intact. No noted redness, swelling of the muscles but C/O pain to touching.

I believe she has a lot of psychiatric components in her condition and that she is over-medicated. [REDACTED]. DE 1, pp. 5-12.

PSYCHIATRIC EVALUATION: HISTORY/OBSERVATIONS: Looking older than age, walked slowly with support of her mother. One hand was shaking. Spoke low tone. Describes severe pain and taking morphine. Appears debilitated due to her pain. Good eye contact, cooperative, fair grooming/hygiene. Posture normal but gait slow. Currently in outpatient psychiatric treatment with medications: [REDACTED]

MENTAL STATUS: In touch with reality and no response to internal stimuli, Average self-esteem with normal psychomotor activity. No motivations, good insight, did not exaggerate or minimize symptoms. Denied all forms of hallucinations/delusions, ideas of reference, thought insertion or broadcasting, obsessions, suicidal/homicidal ideation and plan.

Mood depressed, affect constricted but appropriate. Thought process well organized, speech spontaneous, logical and goal directed. Alert and well orientated. Memory intact. Calculations intact. Abstract thinking, similarities/differences, Judgment, Future plans [All intact.] DIAGNOSES: Axis I: Major depressive disorder. Somatoform disorder. Prognosis is guarded and she is able to manage her own benefit funds. [REDACTED]. DE 1, pp. 13-16.

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 400.10, *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) The Claimant testified that to not performing SGA since 2005. Therefore, the Claimant is not eliminated from MA-P at step one; further review of the claim is necessary.

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 sufficient medical evidence of physical/mental limitations that are more than minimal and effect basic work activities. The medical evidence has established that Claimant has limitations that have more than a minimal effect on basic work activities. But there were no medical records submitted subsequent to February 2007. Claimant’s impairment has lasted continuously for twelve months or more. See finding of facts 8-9

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 impairment is a “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 undersigned's decision was based on functional limitations according to Listing 1.00 *Musculoskeletal System*; and 12.04 *Affective Disorders*; and 12.07 *Somatoform Disorder*.

Listing 1.00 *Musculoskeletal System* requires that the loss of function of both the upper and lower extremities prevent SGA. Here the medical records establish the Claimant has functional use of both upper extremities; although pain was demonstrated on range of motion. See finding of fact 8-9. There were no medical records establishing the trigger point symptoms of fibromyalgia. [REDACTED] opined the Claimant's symptoms had a psychiatric component. The Claimant denied a seizure disorder to [REDACTED]. See finding of fact 9.

Listing 12.04 *Affective Disorders*; and 12.07 *Somatoform Disorder* were reviewed based on Dr. Qadir's opinion. But the severity and intent of the criteria was not present in the medical records for a longitudinal period. Especially since there were no medical records dated after February 2007.

In this case, for the reasons set out above, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records. Sequential evaluation under step four or five is necessary. 20 CFR 416.905

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 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.

Here, the Claimant's last work was in the financial and business work at accountancy type work which is highly skilled. Given the lack of medical records after February 2007, the undersigned decides the Claimant cannot return to past relevant work based on the medical opinions in February 2007.

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 NW2d 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 because of the mental and physical examination opinions in February 2007; and the Claimant's obesity. See finding of facts 8-9. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

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 thirty-nine is considered a *younger individual*; a category of individuals age 18 to 49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.29, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, skilled or semiskilled, skills transferable [Calculation ability and memory were intact.]; the Claimant is “not disabled” per Rule 201.28.

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.

