

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.: 2007-20634

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

January 10, 2008

Wayne County DHS (19)

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 January 10, 2008. The Claimant and representative appeared at the Department of Human Service (Department) in Wayne County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were not received, except a copy of a court case relating the facts of the murder of the Claimant's daughter. 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) 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) In April 2007 the Claimant' benefits for MA-P and SDA were re-determined.
- (2) On June 14, 2007 the Department denied the application: and on October 16, 2007 the SHRT found the medical evidence established medical improvement and the ability to perform unskilled medium work.
- (3) On June 21, 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 fifty-four years of age.
- (5) Claimant completed grade 9; and can read and write English and perform basic math.
- (6) Claimant last worked in 2001 at a gas station/convenience store.
- (7) Claimant has alleged a medical history of post traumatic stress disorder and panic related to the murder of her daughter in [REDACTED], knee replacement in [REDACTED] and left hip arthritis.
- (8) May 2006 in part:

The ALJ granted MA-P and SDA benefits based on medical diagnoses of bilateral knee pain, urinary incontinence, history of bowel incontinence and major depressive disorder with symptoms of constant right leg pain, daily left knee pain, ankle swelling and bilateral leg numbness. The ALJ found mental and physical impairments disabled by preventing basic work activities at step two. Department Exhibit (DE) 1, pp. 74-79.

- (9) January and April 2007, in part:

CURRENT DIAGNOSIS: Osteoarthritis left knee, low back pain.

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

FINDINGS: Musculoskeletal: left hip, left knee apin, going to physical therapy.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up to 20 pounds 1/3 of 8 hour day; 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 both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; foot surgery bilateral feet. Medications Zoloft, Cleovan, Ditinpin
MENTAL LIMITATIONS: Sees a psychiatrist. [REDACTED], Internal Medicine.

[REDACTED]: Long standing client for several years; and to present [REDACTED]. Diagnosed with Major depressive disorder over ten years and prescribed anti-depressant medication to address symptoms of poor motivation, depressed mood, difficulty completing ADLs, sleep disturbance and excessive sleeping. Weight gain due to overeating, crying spells, isolative behavior, feelings of guilt, low self-esteem and sporatic thoughts of death. Two previous hospitalizations following suicide attempts at age 16 and in [REDACTED].

Ongoing emotional stressors complicate treatment for the diagnosis of PTSD Chronic including health issues, history of childhood sexual abuse, financial support, and complicated grief issues related to daughter's murder at age 13. She is active in treatment to meet goals of ability to cope with depressive symptoms, improve self-esteem and increase level of independent functioning. [REDACTED], LMSW/ACSW. DE pp. 26-30

(9) May 2007, in part:

Physical Examination: CONCLUSIONS: Morbid Obesity, Mild hypertension, Gastritis. Moderate to severe arthritis left hip and left knee. History of major depression and taking Wellbutrin and Zoloft. [REDACTED], MD. DE 1, pp. 6-8.

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.

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 2001. Therefore, 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 physical/mental limitations that are more than minimal and impact basic work activities. The impairments will last her lifetime. 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 impairments 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.

The severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listings 1.00 *Musculoskeletal system*; and Listing 12.00 *Mental Disorders* would be applicable to the facts but the medical records do not establish the intent and severity of the listings according to the severity requirements of 12.00C and 1.00Ba

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 establishing the intent and severity of the listings of Appendix 1 of Subpart P of 20 CFR, Part 404. 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/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.

Here, the medical findings do not establish improvements in physical or mental functioning. On re-determination of eligibility, the undersigned decides the medical records establish the Claimant continues to be "disabled" especially given the Claimant's to achieved educational level of grade 9; and age 54.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents return to other work for ninety days. This Administrative Law Judge finds the Claimant is "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 "disabled" for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the April 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and representative of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in May 2010.

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

Date Signed: 05/12/09

Date Mailed: 05/12/09

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 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.

JRE/jlg

cc:

