

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. 2007-26106
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
February 21, 2008
Oakland 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, a hearing was held on February 21, 2008. The Claimant and her mother, [REDACTED] appeared at the Department of Human Services (Department) in Oakland County District 3.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records and consultative examinations/tests. No medical records were received and the record closed. The Claimant filed a new application and benefits were granted beginning June 2008. Therefore, a closed time period of July 2007 through May 2008 is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (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 July 9, 2007 the Claimant applied for MA-P and SDA.
- (2) On July 31, 2007 the Department denied the application; and on December 3, 2007 the SHRT denied the application finding the medical records evidenced a capacity to perform past relevant sedentary work.
- (3) On August 7, 2007 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED] and for the relevant time period, the Claimant was fifty-two years of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and perform basic math skills.
- (6) Claimant last worked [REDACTED] as a secretary for 17 years; and was laid-off.
- (7) Claimant has a medical history of use of a cane/walker for left leg weakness, drop feet right/left, right/left hand weakness, loss of balance, feet numbness after stroke-like symptoms with hypertension and shortness of breath on talking.
- (8) [REDACTED], in part:

MRI lumbar spine: IMPRESSION: Degenerative disc disease at L4-L5 and L5-S1 associated with degrees of bilateral neural foraminal narrowing. Broad based disc bulge associated with facet hypertrophy at L5-S1. There is triangulation of the thecal sac/mild and relative central canal stenosis at L5-L5. No herniated disc; and no spinal canal stenosis. Incidental finding of uterine fibroid. [REDACTED]. Department Exhibit (DE) 1, p. 10.

- (9) [REDACTED], in part:

Request for evaluation and treatment with therapeutic exercise, gait training/balance/coordination and teaching of home stretch/exercise program; and Diagnosis of Foot drop. Treat with bilateral ankle foot orthotics. [REDACTED]. DE 1, pp. 22-26.

- (10) [REDACTED], in part.

CURRENT DIAGNOSIS: Lower extremity weakness. Hypothyroidism.

HT 63", WT 159, BP 150/96.

NORMA FINDINGS: HEENT, Respiratory, Cardiovascular, Abdominal, Mental.

ABNORMAL: General: myopathic gait. Musculoskeletal: moderate weakness hip and knees. Severe weakness ankles.

FINDINGS: Reflexes brisk especially biceps.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Lifting/carrying less than 10 pounds 2/3 of 8-hour day; 10 pounds 1/3 of 8 hour day, never 20 pounds or over; stand and/or walk less than 2-hous in 8 hour day; use of both hands/arms for simple grasping, reaching, pushing/pulling and fine manipulating; use of both feet/legs for operating foot/leg controls. No need for assistive walking devices. FINDINGS: significant muscle weakness. No Mental limitations. Can meet won needs at home. Medications: Levothyroid, Atenolol, Lisinopril.

Prescribe physical therapy three times a week for one month. [REDACTED]

[REDACTED] DE 1, pp. 14-15.

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 2004. 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 to support a finding that Claimant has weakness of the lower extremities. This physical limitation is more than minimal and impact basic work activities. The medical evidence has established that Claimant has physical limitations have more than a minimal effect on basic work activities. The Claimant’s physical impairments/weakness of the lower extremities was first noted in medical records in [REDACTED]. There was no prior noted medically documented weakness of lower extremities. In February 2008 at hearing, the Claimant testified to weakness of the lower extremities, but no medical records were submitted.

In the [REDACTED] medical records, [REDACTED] prescribed physical therapy and limitations that would allow the Claimant to perform sedentary work activities; and the doctor opined the claimant did not need assistive walking devices which the Claimant testified using in February 2008. But the undersigned recognized the grant of benefits in [REDACTED]; and thus finds the duration and severity met to proceed

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 Listing 1.00 *Musculoskeletal System*.

In this matter, medical records establish lumbar spine degenerative changes. See Finding of Facts 8-10. There were no medical records that supported a loss of lower extremity or upper extremity function. See Finding of Fact 10.

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 of a 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 medical findings were normal for all body systems except the effected musculoskeletal impairments, which [REDACTED] opined was lower extremity muscle weakness. But the doctor did not seem too worried and did prescribe physical therapy.

The doctor did not find neurological deficits but that reflexes were brisk. The undersigned finds that based on [REDACTED] opinion; and as noted earlier, the Claimant has the residual functional capacity to perform sedentary work and return to past secretarial work, which was sedentary. No other decision can emanate due to the laws requirement of medical proof; and here, the lack of medical records requires a finding of not disabled at step four for the time period July 2007 through May 2008.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents past relevant work activities for ninety days for the time period July 2007 to May 2008. 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 13, 2009

Date Mailed: February 19, 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.

2007-26106/JRE

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

cc:

