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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.: 2007-30660
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
June 9, 2008
Wayne County DHS (18)

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 representative [redacted] appeared at a hearing held on June 9, 2008 at the Department of Human Service (Department) in Wayne County, District 18.

The closing date was waived. An Interim Order was issued for additional medical records from 2008. No additional medical records were received. The record closed. The 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), retroactive MA-P for the months of December 2006; and January, February 2007 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 March 30, 2007 the Claimant applied for MA-P retroactive MA-P and SDA; and a previous application filed September 20, 2006 was denied in February 2007.

(2) On June 26, 2007 the Department denied the application; and on January 17, 2008 the SHRT denied the application finding the medical records did not document an impairment that significantly prevented the performance of basic work activities.

(3) On September 13, 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 presently fifty-one years of age.

(5) Claimant completed grade 12, and a cosmetology diploma; and can read and write English and perform basic math.

(6) Claimant last worked in 1998 for a grocery store; and a manufacturer of auto parts and has performed cleaning. Security and lunch aid work; and declaration was to leaving employment due to illness; and previous application declared employment as a cashier to January 1999. Department Exhibit (DE) 1, p. 64 and 239.

(7) Claimant has alleged a medical history of colitis with diarrhea 4-6 times a day, chronic gastritis, esophagus dysfunction with vomiting. Arthritis of the hip, elbow, hand and back, non-insulin dependent diabetes mellites (NIDDM), carpel tunnel syndrome bilaterally with swelling and bipolar disorder.

(8) January, March 2007, in part:

> December 2006: No medical records.
>
> January 2007: INDEPENDENT MEDICAL EXAMINATION: History of ulcerative colitis started with diarrhea associated with blood in 1997. Was started on Cantussa, Propulsid, Bentyl and Lomotil with steroids to control acute episodes. States was in

remission but states has 4-6 liquid stools a day. Acute episode in January 2007 and was treated with steroids. States was a nurse's aid and has been beautician since 1998. Smokes 5 cigarettes a day for 35 years.

PHYSICAL EXAMINATION: HT: 62", WT: 158, BP 110/80. HEENT, Fundoscope, Neck, Lungs, CVS, Abdomen, Skin, Extremities, Bones and Joints, Nervous System: [All within normal limits.] Except: poor dentition and many decayed teeth in upper jaw; and treated by her dentist. Rhonchi in both lungs. Hepatomegaly and painful on examination. SLR associated with pain both hips. Pain to touch in lumbosacral area. Flexion knees associated with crepitation and pain more on right. Impaired coordination on tiptoe. Absent deep tendon reflexes in ankles may be due to the fact she kept her ankles rigid. [redacted]. DE 1, pp. 230-233.

January: Acute series of abdomen and chest; IMPRESSION: Minor degenerative changes to hips. No acute cardiopulmonary process. Nonspecific abdomen. [redacted] DE 1, pp. 144-145

March: X-rays acute abdomen: IMPRESSION: No acute process in lungs with no interval changes. Nonspecific abdomen findings. [redacted]. DE 1, p. 209.

March: CT abdomen and pelvis: IMPRESSION: No nephrolithiasis. Cortical left renal cyst, stable/unchanged. Nodular liver possible cirrhosis. No bowel obstruction. No focal colitis or abscess. [redacted] DE 1, pp. 204-205.

(9) May, June and September 2007, in part:

May: CT pelvis for abdominal pain: CT abdomen: Liver has nodular contour. Spleen, pancreas, right adrenal, kidneys are normal. Left adrenal gland mass is unchanged. No evidence of hydronephrosis or hydrouteter. No evidence of mass or lymphadenopathy. Visualized loops of bowel are normal. Abdominal aorta and inferior vena cava are normal. CT pelvis: Loops of bowel, bladder, iliac arteries and iliac veins are unremarkable. No evidence of mass or lympthadenopathy. No evidence of free air or fluid within abdominal cavity. Degenerative joint disease changes within lumbar spine with bilateral defects at L5 with small degree of anterior listhesia. [redacted]

May: Acute series with chest: FINDINGS: heart and mediastinum normal limits. Lungs are clear. Left chest wall port in place.

Stomach is quite distended with gas. Right upper quadrant post operative changes are stable. No acute abnormality of bones. [redacted] DE 1, pp. 52-54.

June: History of present illness: to ER for severe abdominal pain, diarrhea without blood and vomiting for five days. Had recent ER for same symptoms and was given medication but symptoms persist. Hospitalized due to distended bowel. Has had multiple surgeries including hiatal hernia repair in 1997. Is a smoker for 30 years and denies alcohol. PHYSICAL EXAMINATION: [all within normal limits.] Except: Abdominal pain and distension. Dorsalis pedal pulses are fair. Being admitted to hospital. [redacted] DE 1, pp. 9-10.

June: CURRENT DIAGNOSIS: Abdominal pain, Gastritis, Colitis. Height 62", Weight 138.

NORMAL EXAMINATION AREAS: General, HEENT; Respiratory, Cardiovascular, Musculoskeletal, Neuro.

FINDINGS: Abdominal. Mental: depression by past history.

CLINICAL IMPRESSION: Deteriorating, not able to work divurticulitis and stomach positive.

PHYSICAL LIMITATIONS: Weak, expected to last over 90 days; Lifting/carrying up to 10 pounds 1/3 of 8 hour day; not able to stand and/or sit; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; no use of either feet/legs for operating controls. Constant abdominal pain and flare ups of colitis. Sometimes needs help in home.

MENTAL LIMITATIONS: None, comprehension, memory. [redacted] DE 1, pp. 7-8.

September: Discharge/Patient Education: Diagnosed with Gatroparesis secondary to diabetes positive idiopathic. To follow up with Michael Schaffer. Medications: Bentyl, Dilaudid, Metronidazole, Nexium, Pancrease, Pheregan, Reglan, Surcalfate, Tylenol 4. [redacted]

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 SGA. 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not engaging in SGA since 1998 but a medical record indicates the Claimant works as a beautician. There was no further information. Therefore, the Claimant is not disqualified from 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 sufficient medical evidence to support a finding that Claimant has physical impairments; and the medical evidence has established that Claimant has physical impairment that has more than a minimal effect on basic work activities. There were no medical records establishing a mental impairment that prevents basic work activity since

January 2007. The Claimant's impairments have lasted continually since January 2007. See finding of facts 8 and 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 available record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's impairments are 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 5.00 *Digestive System*. Disorders of the digestive system result in a marked impairment because of interference with nutrition, multiple recurrent inflammatory lesions or complications of disease such as fistulae, abscesses or recurrent obstruction. Such conditions usually respond to treatment. These complications must be shown to persist on repeated basis despite therapy for a reasonable presumption to be made that the marked impairment will last for a continuous period of at least 12 months.

In this matter, medical records do not establish the above disorders. Appropriate medical testing repeatedly ruled out obstructions. Listing 5.08 *Weight loss due to any persisting gastrointestinal disorder* does not apply to the case of the Claimant. The Claimant's weight at the time of hearing was 140 pounds. Listing 5.08 for height of 62" is met when weight is 86 pounds. Finally; and in regards to diarrhea and vomiting, the April 2007 medical records contained lab results for both electrolytes and hemoglobin. The medical records indicate the Claimant's results as normal. There was no medical evidence or appropriate medical testing that

established severe or marked loss of function under Listing 1.00 *Musculoskeletal system*. See finding of facts 8-9.

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 lack of medical records to establish the severity or marked difficulties needed to establish Listing 5.00.

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 were normal for all physical body systems except the related gastric symptoms which are episodic in nature and some musculoskeletal complaints. There was no accurate confirmation of the Claimant's compliance with taking prescribed medications. The medications prescribed should by all expectations alleviate the symptomology claimed by the Claimant. The undersigned notes that when hospitalized numerous times and medically treated the Claimant's condition improved.

But there was a question unanswered as to the Claimant working as a beautician. The most recent medical evaluation of the Claimant's physical function was in June 2007. The Claimant provided evidence that she could not return to past work due to illness. See finding of fact 6. The undersigned accepts this and finds the Claimant is not eliminated from a finding of disability at step four.

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 based on the findings of the her doctor in June 2007. Except her doctor proscribed use of either feet/legs but did not prescribe the use of a walking aid. This is inconsistent. See finding of fact 9 also see finding of fact 8.

The Claimant testified at hearing to standing for one-half hour; being independent in performance of ADLs, vacuuming and dusting. There was also a reference to performing beautician work. See finding of fact 8. This evidence indicates to the undersigned that sedentary is appropriate. 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 fifty-one is considered *approaching advanced age;* a category of individuals age 50-54. 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 201.15 for approaching advanced age, age 50-54; education: high school graduate or more does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable [Beautician]; the Claimant is "not disabled" per Rule 201.15.

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.

In this case, there is insufficient evidence to support a finding that Claimant's physical and mental impairments meet the disability requirements under SSI disability standards and prevent

substantial gainful activities for ninety days. 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: 03/31/09

Date Mailed: 03/31/09

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: [redacted]