

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. 2007-00999

Issue No. 2009; 4031

Case No:

Load No. ██████████

Hearing Date:

January 22, 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, a hearing was held on January 22, 2007. The Claimant, her sister ██████████ appeared at the Department of Human Services (Department) in Wayne County District 15.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records. From January 22, 2007 to the present, no new medical records were submitted. 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 June 28, 2006 the Claimant applied for MA-P and SDA.
- (2) On September 22, 2006 the Department denied the application; and on December 19, 2006 the SHRT denied the application finding medical evidence supported a capacity to perform basic work activities and non-severe.
- (3) On October 2, 2006 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 years of age.
- (5) Claimant completed grade 11 and a GED and business training; and can read and write English and perform basic math skills.
- (6) Claimant last worked in [REDACTED] as a unit clerk for DRH for seven years; and before at Grace in housekeeping for six years.
- (7) Claimant has a medical history of out of control IDDM for ten years, scleroderma causing bone pains, right leg neuropathy, and trembling hands for two to three years
- (8) [REDACTED], in part:

DISCHARGE DIAGNOSIS: Pancreatitis
SECONDARY DIAGNOSIS: Scleroderma, Diabetes, Lupus, Neuropathy, History of peptic ulcer.

HISTORY: Admitted through ER. C/O unable to tolerate oral intake with mild dysuria, urgency and vomiting with diffuse abdominal pain. Current Medications: Amitriptyline, Levothyroid, Vicodin, Neurontin, Lisinopril, mag oxide and Insulin.

TWO DAY HOSPITAL COURSE: Physical Examination: [Within normal limits.] Except abdomen tender to palpitation and minimal guarding. Laboratory data: Elevated amylase and lipase. UDS positive for cannabinoids and opiates. Treated medically with IVs and vital signs remained stable. Tolerated clear liquids and was

ambulating well with pain completely resolved. All lab results normalized over hospital course. Seen by Rheumatology during stay and they stated there was no acute intervention needed but would be happy to follow as outpatient. To follow with rheumatology, [REDACTED] and with PCP and endocrinologist. Resume activities as tolerated. Avoid greasy food, resume home medications. Discharged home in stable condition. [REDACTED], [REDACTED] Department Exhibit (DE) 1, pp. 9-11.

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 [REDACTED]. 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence of a [REDACTED] hospitalization and diagnosis of pancreatitis. But the pancreatic enzyme abnormality and pain resolved before discharge and the Claimant was discharged to home on home medications. The medications listed above indicate treatment for IDDM, hypertension, neuropathy, thyroid and pain. But there was no indication in the [REDACTED] medical records that any of these conditions were disabling the Claimant from work, no high blood sugar, no high blood pressure; and no ambulatory difficulties. See Finding of Fact 8. These were the only medical records reviewed by SHRT.

At hearing the Claimant had multiple symptoms including visual problems, pain in several joints, falling due to neuropathy of right leg, high blood sugars with episodes of ketoacidosis, tremor of both hands; and open sores on her arms, leg, back and using Plaquenil for the sores; and limits of using a cane for walking and lifting of below five pounds.

Based on the Claimant's testimony at hearing, the undersigned finds physical impairments more than severe and to the point of impacting basic work activities. There was no medical evidence of a mental impairment impacting basic work activities. These diagnosed impairments will last her lifetime.

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.

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 the insufficiency of the medical evidence. 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.

The Claimant's recent past relevant work was basically sedentary. Given the Claimant's testimony at hearing; the undersigned decides the Claimant cannot return to past relevant work.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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. 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-two is considered *closely 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 201.14, for individuals, age 50-54; education: high school graduate—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “disabled” per Rule 201.14.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 sufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work activities 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 June 2006 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant 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 three months or by May 2009.

/s/

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

Date Signed: February 11, 2009

Date Mailed: February 17, 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.

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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:

