

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: 2007-04346

Issue No: 2009, 4031

Case No. [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 5, 2007

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Tyra Wright

HEARING DECISION

The hearing in this matter was conducted by Administrative Law Judge [REDACTED] on April 5, 2007, pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Judge [REDACTED] left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of all evidence in the record including the recording of the actual hearing.

ISSUES

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA) 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) Claimant applied for SDA and MA on June 28, 2006.
- (2) The Medical Review Team (MRT) denied the application for both programs on October 19, 2006.

- (3) At the time of the hearing, Claimant was homeless and living in her car. She has a driver's license and is capable of driving but is limited by right shoulder pain that prevents her from shifting gears and from sitting for long periods of time.
- (4) Claimant's alleged disabling impairments are: Hypertension that causes headaches and dizziness; right shoulder problems due to torn ligaments, reducing her ability to lift her right arm over her head; mild arthritis in her knees and hips that sometimes requires walking with a cane; and major depression diagnosed in the late 1990s.
- (5) Claimant complains that her memory and concentration are very poor. She has panic attacks, crying spells, anxiety attacks, nervous attacks, hallucinates, is sometimes paranoid and has low self-esteem.
- (6) Claimant was 54 years old with a birth date of [REDACTED], at the time of the hearing. Claimant was 5'7" and weighed 200 pounds. Claimant completed high school and some college.
- (7) Claimant last worked on April 12, 2004 as a vocational school teacher. She stopped working due to injuries to her right shoulder and back. She was responsible for teaching students how to be custodians. This included teaching students to use floor strippers, floor shampoo equipment, and floor buffers. She was with the [REDACTED] for 17 years; the first nine years she ran the dish room, which involved washing 500-600 dishes twice each day. In this capacity she lifted 30 to 40 pounds and was on her feet all day.
- (8) Claimant also contends that she cannot sit longer than 30 minutes, cannot stand or walk more than 35 minutes, cannot stoop, has difficulty bending, and cannot lift

more than five pounds and periodically cannot walk without the assistance of a cane.

- (9) Claimant also contends that she cannot do her previous work because it involves a lot of lifting and pulling trash and pushing floor buffing and stripping equipment.
- (10) The MRT found that Claimant's impairments do not meet or equal the intent or severity of a Social Security listing. The medical evidence of record indicates that Claimant retains the capacity to perform a wide range of unskilled light work. Based on her vocational profile and skilled work history, MA-P was denied using vocational rule 202.13 as a guide. Retroactive MA-P was considered and also denied. SDA was denied under PEM 261 because the nature and severity of Claimant's impairments would not preclude work activity at the appropriate level for 90 days.
- (11) The Department received Claimant's hearing request on November 30, 2006.

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies for FAP and MA are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, 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).

Pursuant to Federal Rule CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

. . .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

Pursuant to 20 CFR 416.920 a five step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b). In this case, Claimant is not employed. She last worked for the [REDACTED] as a vocational teacher on April 12, 2004.

Secondly, the individual must have an impairment that must have lasted or must be expected to last for a continuous period of at least 12 months. This is the "durational requirement". 20 CFR 416.909. In this case, Claimant's impairments have lasted longer than 12 months.

The third step in the process is to assess whether the impairment or combination of impairments significantly limits an individual's physical or mental ability to perform basic work activities. If these abilities are not significantly limited, an individual does not have a severe

impairment and is therefore not disabled. 20 CFR 416.920(c). In this case, the Claimant's combination of impairments significantly limits her physical or mental ability to perform basic work activities. Claimant cannot lift more than five pounds.

In the fourth step of the process the social security listing in appendix 1 is used. If the impairment or combination of impairments meet or is the medically equivalent of a listed impairment as set forth in appendix 1, the individual is considered disabled. If not, vocational factors are considered. 20 CFR 416.920(d). In the instant case, Claimant's combination of impairments does not meet and is not the medical equivalent of a listed impairment.

In the fifth step an individual's residual functional capacity (RFC) is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations. To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or

standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

In the present case, Claimant is not employed. She last worked for the [REDACTED] [REDACTED] as a vocational teacher on April 12, 2004. Her impairments have lasted longer than 12 months. The combination of impairments significantly limits her physical or mental ability to perform basic work activities. The combination of impairments, however, does not meet and is not the medical equivalent of a listed impairment. Therefore, her RFC was considered in determining whether disability exists. Because Claimant cannot lift more than five pounds, cannot sit longer than 30 minutes, and cannot stand or walk more than 35 minutes, she can only perform sedentary work.

At 54-years old, Claimant was approaching advanced age. Claimant previously performed unskilled work as a dishwasher and then semi-skilled work teaching students to use

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 mailing 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.

TW/dj

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