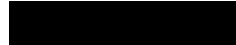


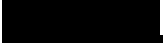

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2007-11259
Issue No.: 2009, 4031
Case No.: 
Load No.: 
Hearing Date:
December 19, 2007
Wayne County DHS (58)

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 appeared at a hearing held on December 19, 2007 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were ordered by an Interim Order. 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) program 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 July 28, 2006 the Claimant applied for MA-P and SDA.
- (2) On December 4, 2006 the Department denied the application; and on November 26, 2007 denied the application finding the medical records supported the capacity to perform light/sedentary work.
- (3) On February 28, 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-seven years of age.
- (5) Claimant completed grade 12 and one and on-half years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2002 as a cashier; and prior as an auto factory assembler and for customer service [REDACTED]
- (7) Claimant has alleged a medical history of diabetes, hypertension, rheumatoid arthritis, depression and isolation, right and left carpal tunnel and under active bowels.
- (8) August 2006, in part:

CURRENT DIAGNOSIS: Depression, Type II diabetes, hyperlipidemia, HTN, LGI bleed, peripheral neuropathy, carpal tunnel.
Height 63", weight 184, BP 120/80, Visual acuity best corrected: right 20/20, left 20/20.
NORMAL EXAMINATION AREAS: HEENT; Respiratory, Cardiovascular, Musculoskeletal.
FINDINGS: General: pain/fatigue. Neuro: decreased sensitivity lower extremities. Mental: depression.
CLINICAL IMPRESSION: Stable.
PHYSICAL LIMITATIONS: Limited and expected to last more than 90 days. Lifting/carrying up to 10 pounds, 1/3 of 8 hour day, never 20 or over. Stand and/or walk at least 2 hours in 8 hour day; sit less than 6 hours in 8 hour day. No assistive devices needed to walk. Use of either hand/arms for simple grasping,

reaching, pushing/pulling and fine manipulating. Use of either feet/legs for operating foot controls. Cannot meet own need in the home for first aid. Mental limitations in comprehension, memory and sustained concentration and social interaction. Medications: HCTZ, Lipitor, Lisinopril, Colace. [REDACTED] Department Exhibit (DE) 1, pp. 24-25.

(9) November 2006, in part:

States has been seen/treated in ER several times. Takes Buspar for depression but not in out-patient nor had inpatient psychiatric treatment; and takes medication for hypertension and high cholesterol. Diabetes is diet controlled. States chronic pain in legs and balance problems and standing, stooping, squatting limitations. No X-rays done. States has problems with hands in holding objects and repetitive movements but no EMG testing. Diarrhea problems but no colonoscopy. Positive for smoking one pack per day for 30 years.

PHYSICAL EXAMINATION: Well developed, nourished, cooperative, no acute distress, awake, alert, orientated times 3, answers questions fairly well, dressed appropriately. Vital signs: HT 62-3", WT 184, BP 110/90, visual acuity without glasses 20/100 right, 20/100 left but with glasses 20/25 right, 20/40 left. HEENT, Respiratory, Cardiovascular, Gastrointestinal, Skin, Extremities, Bones and Joints, Neurological: [All within normal limits.] Except: unable to do toe walk and limited squatting but can recover from squatting. Range of motion and gait intact. [REDACTED] DE 1, pp. 11-19.

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 2002. Thus, the 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 and testimony that support both mental and physical impairments. See finding of facts 8-9. The medical evidence has established that Claimant has a mental/physical impairment that have more than a minimal effect on basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical and mental impairments are 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 mental and physical 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.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, the medical records do not contain appropriate medical testing to establish physical or mental impairments. But the Claimant testifies to physical impairment problems. See finding of fact 9. [REDACTED] opines that in her clinical exam the blood pressure was under control with medication, diabetes was controlled with diet alone, hyperlipidemia was treated with medication, depression was treated with medication prescribed by her PCP and for pain of hands and headaches, the Claimant was treated with analgesics.

The undersigned finds the Claimant medical records do not establish the criteria, severity and intent of listings under Appendix 1 of Subpart P of 20 CFR, Part 404.

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. 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was cashier, auto assembly and customer service work in both light and sedentary category. The Claimant told [REDACTED] of several ER visits but at hearing; and in testimony, the Claimant's last ER visit [REDACTED]. The medical evidence

does not establish physical impairments that prevent return to past relevant work. But arguendo, with the Claimant's past work and education, she is not disabled under step five.

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 totality of 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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).

(a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility

even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-seven is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.07, for advanced age, age 55; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable [cashier and customer service]; the Claimant is “not disabled” per Rule 202.07.

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 impairments meet the requirements under SSI disability standards, and prevents light work activities for ninety days. This Administrative Law Judge finds the Claimant is presently "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 and State Disability Assistance programs.

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: March 5, 2009

Date Mailed: Marc 9, 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.

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:

