

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: 2007-11500

Issue No: 2009, 4031

Case No:

[REDACTED]

Load No:

Hearing Date:

December 10, 2007

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on December 10, 2007 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. Also present on behalf of Claimant was [REDACTED] [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for MA & SDA on August 30, 2006. Claimant requested MA and SDA retroactive to May 2006.
2. Claimant's impairments are coronary artery disease, diabetes, high blood pressure, cataracts, and diabetic neuropathy.
3. Claimant underwent a quadruple bypass for coronary artery disease in 2001.
4. Claimant's physical symptoms are chest pain upon exertion, migraine headaches 2-3x/week, low back pain, numbness in feet, pressure and burning in her chest.
5. Claimant is 5'6" tall and weighs 180 pounds.
6. Claimant testified to the following physical limitations:
 - Lifting up to 10 lbs.
 - Sitting – 1 hour
 - Standing – 1 hour
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 46 years of age.
9. Claimant has a high school education. She was in special education grades 8-12.
10. Claimant is currently employed [REDACTED].
[REDACTED]. The maximum that Claimant would work per week is 10 hours/week; although, as she is on-call, she had only worked 2 hours from June through the hearing date on 12/10/07.
11. Claimant has employment experience as a cashier and doing housekeeping.

12. Claimant testified that she performs household activities such as cooking, shopping (with help), making the bed, cleaning the tub.

13. Claimant testified that her hobbies include writing letters and playing cards.

14. The Department found that Claimant was not disabled and denied Claimant's application on 11/17/06.

15. Medical records examined are as follows:

[REDACTED], in part (Exhibit A)

Patient presented to ER with chest pain reporting nausea and vomiting, pain worse on exertion. Patient received nitroglycerin at home and through EMS. Patient was started on a nitroglycerin drip, IV fluids and morphine.

[REDACTED] in part (Exhibit B)

Patient present to ER with chest pain. A stress test was ordered and cancelled because of continued chest pain and low blood pressure. Heart catheterization recommended and performed showing:

1. Left ventricular ejection fraction around 60%
2. Left main had significant disease around 70%
3. Left anterior descending artery was totally occluded, 100%
4. Left circumflex was totally occluded, 100%
5. Right coronary artery was totally occluded distally

Final Conclusion: Preserved left ventricle function

[REDACTED] (Exhibit C)

Exertional Limitations as follows:

1. Occasionally lift up to 10 lbs.
2. Standing/walking less than 2 hrs/day
3. No limitations on sitting
4. Limited reaching, handling (gross manipulation) and fingering (fine manipulation).

[REDACTED] in part and Treatment notes (Exhibit D)

Diagnosis: Diabetes and diabetic neuropathy.
Tx: Pain medication injection into foot.

[REDACTED] (Exhibit 1, pp. 3-5)

Dx: Coronary artery disease, diabetes. Blood pressure is under control. “The patient complains of low back pain. There is no evidence of muscle spasm.”

[REDACTED] , in part (Exhibit 1, pp. 12-15, 21-25)

Admission for chest pain

[REDACTED] in part (Exhibit 1, pp. 16-20)

Admission for chest pain

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.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, Claimant is not working enough hours or making enough wages for her employment to qualify as substantial gainful activity. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

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 F.2d 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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of coronary artery disease, diabetes, and diabetic neuropathy. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. There was no medical evidence submitted regarding Claimant’s low back pain or cataracts. The Claimant’s medical records did not document any mental impairment.

3. Listed Impairment

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 physical and mental impairment 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. The Listing 4.04 *Ischemic heart disease* was reviewed. In this matter, the medical records establish a diagnosis of coronary artery disease since 2001. While Claimant has had several episodes of angina (chest pain), Claimant's ventricle function is preserved. Therefore, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the physical impairment does not meet the intent or severity of the listings.

4. Ability to Perform Past Relevant Work

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.

Claimant's previous employment was classified as unskilled, light work. Light work requires lifting up to 20 lbs and a good deal of walking or standing. As [REDACTED] determined, Claimant has exertional limitations of occasionally lifting up to 10 lbs and standing/walking less than 2 hours/day. As Claimant is currently capable of doing only sedentary work, 20 CFR 416.967, this Administrative Law Judge finds that Claimant is not able to perform her past work.

5. Ability to Perform Other 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 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 N.W.2d 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 [REDACTED] physical functional evaluation as signed [REDACTED] Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

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 forty-five, is considered a *younger individual*; a category of individuals in age group 46-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21. While claimant was in special education in grades 8-12, Claimant testified that she is able to read and write and perform simple math calculations. Claimant is currently working part time. Claimant also testified that she enjoys writing letters and playing cards. Furthermore,

Claimant is able to perform household activities such as cooking, making the bed and cleaning the bathtub. These activities indicate that Claimant is already doing sedentary type activities at home. Claimant is “not disabled” per Rule 201.21.

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 impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is not “disabled” for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that the Department was correct in determining that the claimant was not disabled for

the purposes of the MA / SDA program and IT IS ORDERED that the Department's decision in this matter is AFFIRMED.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith
Department of Human Services

Date Signed: March 11, 2009

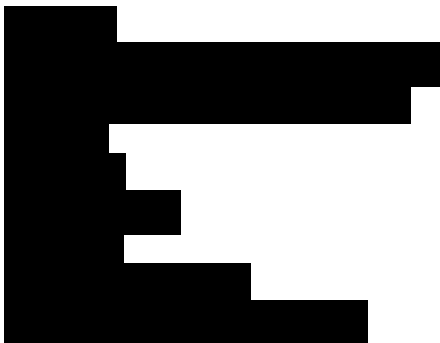
Date Mailed: March 11, 2009

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 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.

JV/dj

cc:

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