

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: 2007-12891

Issue No: 2009; 4031

Case No:

Load No:

Hearing Date:

June 27, 2007

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith by telephone conference on July 12, 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 Claimant's mother, [REDACTED]. Linda Thurman 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 November 14, 2006.
2. Claimant's impairments are Morbid Obesity, Carpal Tunnel Syndrome, Learning Disability with IQ of 63, Arthritis, Sleep Apnea, Hypothyroidism, Edema and Depression.
3. Claimant's physical symptoms are frequently dropping things, aching joints, difficulty walking, pain in hands and knees and shortness of breath.
4. Claimant's mental symptoms are poor memory, poor concentration, crying spells, fatigue, very low self esteem, confusion, and poor reading comprehension.
5. Claimant is 5'3" tall and weighs 285 pounds.
6. Claimant testified to the following physical limitations:
 - Lifting up to 5 lbs.
 - Sitting – ½ hour
 - Standing – 10 min.
 - Walking – 50 ft.
 - Difficulty gripping & grasping
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 48 years of age.
9. Claimant has a high school education completed in special education. Claimant is not able to perform basic math.
10. Claimant was last employed in [REDACTED] for the [REDACTED] in the kitchen. The employment lasted four months.
11. Claimant testified that she performs household activities such as grocery shopping (with help) and straightening up the house. Claimant does not cook or clean the house.
12. Claimant uses a four prong cane to ambulate.
13. Claimant exhibited difficulty understanding and answering questions.
14. The Department found that Claimant was not disabled and denied Claimant's application on 2/27/2007.
15. Medical records examined are as follows:

████████████████████, 10/14/1968, in part (Exhibit A, p. 1)

“In the school environment, ██████ does not function adequately academically or socially. She is a slow moving and thinking child. Her fine and gross motor coordination is poor. When she is given an assignment in class she seldom completes it, sitting with a confused look on her face repeatedly asking what she is supposed to do and how to do it. Even though the assignment is explained two or three times to her. She has little problem solving ability. Everything must be given to her slowly, step by step and extremely concrete.”

████████████████████, 10/18/68, (Exhibit C-5)

“It would seem to me that ██████ problems are twofold – (1) She obviously has multiple perceptual difficulties, and (2) she is also somewhat slow.”

████████████████████, 10/3/68, (Exhibit C-6, 7)

WECHSLER INTELLIGENCE SCALE FOR CHILDREN

- Verbal IQ Score – 72, borderline low range
- Performance IQ Score – 60 Mental Defective
- Full Scale IQ Score -63 Mental Defective

“The mother informed me that the patient has difficulties in laterality. She for example, uses scissors with her left hand but writes with her right hand. She shows reversal problems. For example, she confuses was and saw and six and nine. During the examination I also noticed this spatial disorientation as well as other various motor disturbances, suggestive of brain damage.”

████████████████████, 6/16/1971, in part, (Exhibit C).

Full scale IQ of 72. Psychotherapy.

Echocardiogram, 2/13/04, in part (Exhibit 1, p. 21)

Summary: The left ventricle is normal in size, thickness and systolic performance. The estimated LV ejection fraction is 65%. Morphologically normal cardiac valves with normal transvalvular flow patterns. Normal right heart chambers.

██████████, Medical Examination Report,
9/8/06, in part (Exhibit 1, pp. 15-16)

Impairments:

- 1) Hypothyroidism
- 2) Collagen vascular disorder of unspecified type (probably RA)
- 3) Sleep Apnea with fatigue
- 4) Edema with salt retention

Mental Examination: Depressed affect

Physical Limitations: Lifting up to 20 lbs. occasionally
Standing walking 2 hrs in 8 hr work day
No pushing/pulling
No operating foot/leg controls

██████████, 12/22/06
(Exhibit a, p. 4)

██████████ is a patient in my sleep medicine practice. She recently underwent a diagnostic sleep study in the sleep center, which revealed a respiratory disturbance index (RDI) of 70.2 apneas per hour of sleep. This is consistent with a diagnosis of severe obstructive sleep apnea (OSA). Therefore, I am recommending a CPAP titration sleep study and nightly use of CPAP in her home once an optimal pressure has been determined.

██████████, 3/19/07, in part.

SYMPTOMS: Symptoms consistent with sleep apnea. She underwent sleep studies and was prescribed a C-PAP Machine but has not been able to afford it. During the day she feels tired and exhausted and has excessive daytime sleepiness. Pain, ache and stiffness in both knees, they give out and seem to swell slightly most of the time. She also complains of aches, stiffness, numbness, tingling and weakness in her hands. She is not able to open a jar, at times she drops objects. Depressed mood – cries and feels worthless and hopeless.

She has an underactive thyroid for several years for which she has been prescribed ██████████. She is not very compliant with her medication.

PHYSICAL EXAM: Mild to moderate restriction in all directions, apparently secondary to her marked obesity. Tinel's sign positive bilaterally and she is not able to make a tight grip. Mild to moderate tenderness, in right knee. Restriction on flexion to 140 degrees.

DIAGNOSES:

1. Morbid Obesity
2. Obstructive sleep apnea
3. Carpal Tunnel syndrome
4. Degenerative arthritis in both knees and lumbosacral spine
5. Hypothyroidism
6. Chronic depression

[REDACTED]
[REDACTED] 6/27/07, in part

SYMPTOMS: Feeling depressed for last few years. She is unable to do things or get out of bed because of pain. She has poor concentration. She feels tired and exhausted and does not socialize with people.

DIAGNOSES: Dysthymic disorder is partial remission. The prognosis is guarded.

16. The following other records were examined:

[REDACTED] Letter of 5/29/07 (Exhibit C-4)

“This letter is to verify that [REDACTED] was employed with the [REDACTED] as a substitute cashier from September 20, 1999 through December 31, 1999. During that time, [REDACTED] did not pass the Food Service test which was a written test containing mathematical equations and was a requirement to be a Food Service employee.”

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, client has not worked since 1999. 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 Morbid Obesity, Carpal Tunnel Syndrome, Learning Disability with IQ of 63, Arthritis, Sleep Apnea, Hypothyroidism, Edema and Depression. The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

3. Listed Impairment

After reviewing the criteria of listing 12.05 *Mental Retardation*, the undersigned finds the Claimant’s medical records substantiate that the Claimant’s mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404 § 12.05 describes and Organic Mental Disorder as follows:

Mental Retardation: Mental retardation: Mental retardation refers to significantly sub average general intellectual functioning with deficits in adaptive functioning initially manifested during the

developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

- C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

Claimant underwent IQ testing in 1968 and scored a full scale score of 63 on the Wechsler Intelligence Scale for Children. Since that time, Claimant scored 72 on the same test in 1972. There is no recent IQ testing; however, Claimant was unable to pass a written test of mathematical questions given to her in relation to a food service position in 1999. The undersigned finds that Claimant's IQ meets the severity requirement of the listing.

Furthermore, Claimant has other physical and mental impairments that significantly limit her functional ability including sleep apnea, arthritis, collagen vascular disorder, edema, obesity, carpal tunnel syndrome, and clinical depression which result in physical limitations. The undersigned finds that these impairments will significantly limit Claimant's ability to function in a work environment.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

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 evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is "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, decides that the claimant is medically disabled under the MA program as of November 14, 2006.

Therefore the department is ORDERED to initiate a review of the application of November 14, 2006, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in April, 2010.

_____/s/_____
Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith

Date Signed: 04/10/09

Date Mailed: 04/10/09

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 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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