

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: 2007-17537
Issue No: 4031, 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 25, 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 October 25, 2006, 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. The Claimant was present and testified. LaShonda Warfield, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

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 SDA and MA in January of 2007.

2. Claimant is 5'4" tall and weighs 225 pounds.
3. Claimant is right handed.
4. Claimant is 46 years of age.
5. Claimant's impairments have been medically diagnosed as pinched nerve in neck, arthritis in low back, diabetes, asthma and depression
6. Claimant's physical symptoms are neck pain with numbness down right arm, lower back pain, dizziness, shortness of breath on exertion and right knee pain.
7. Claimant's mental symptoms are memory impairment, poor concentration, some panic attacks, crying spells, nervousness, suicidal thoughts, auditory and visual hallucinations.
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has a 12th grade education.
10. Claimant is able to read/write and perform basic math skills.
11. Claimant last worked in 1997 doing light industrial work.
12. Claimant has prior employment experience as a home care provider which involved standing, walking and lifting. Claimant also has experience packaging parts which involved standing walking and lifting up to 50 lbs.
13. Claimant testified the following physical limitations:
 - Sitting: 15 minutes
 - Walk: Less than a block
 - Bend/stoop – not able
 - Lift: less than 10 lbs.
 - Grip/grasp – Difficulty in right hand
14. Claimant is only able to perform household chores such as cooking TV dinners. Claimant has a home health care aid that comes to her house to assist her.
15. Claimant uses a cane, a knee brace and a sling for her right arm as well as an inhaler.
16. The Department found that Claimant was not disabled and denied Claimant's application on June 4, 2007.
17. Medical records examined are as follows, in part:

██████ Medical Exam Report (Exhibit 1, pp. 17-18)

HX of IMPAIRMENTS: Diabetes Type 2, Hypertension, Osteoarthritis, Obesity, depression, Asthma.

PHYSICAL LIMITATIONS: Lifting 25 lbs occasionally, stand/walk less than 2 hours in 8 hour day, no repetitive actions.

CAN CL MEET NEEDS IN HOME? No (housework, shopping, grocery).

██████ – IME (Exhibit 1, pp. 5-12)

Pt was told that she had rheumatoid arthritis, but in fact there is no documentation of that. According to the patient, she was on SSI from 1997 – 2006 due to that diagnosis. Pt was told she is diabetic. She was taking oral medication, but she has never checked her sugar or had any admissions for glycemic problems.

MEDICATIONS:

1. Meclizine
2. Vicodin
3. Flexeril
4. Fluoxetine
5. Avapro
6. Amitriptyline
7. Tramadol
8. Naproxen
9. Aspirin
10. Folic Acid
11. Claritin
12. Metformin
13. Flovent inhaler 2 puffs daily
14. Albuterol inhaler two puffs three times daily
15. Lozol

PSYCHIATRIC HISTORY: Positive for depression. In fact she reports that she was admitted to a psychiatric hospital two years ago for 10 days.

MUSCULOSKELTAL: Basically Pt is unable to walk without a hinged knee brace.

EXTREMITIES: Pt is utilizing a cane, which was given to her by a physician. She also has a right knee hinged brace. She managed to move around without the can for a few steps without difficulty, but she needed the cane to get on and off the exam table. She was unable to squat. She had good grip bilaterally. The right shoulder

has significant reduced range of motions. The back forward flexion was limited.

IMPRESSION: Osteoarthritis and spinal disorder – Pt has significant osteoarthritis involving the lumbosacral region and the right shoulder and right knee . . . the range of motion was limited significantly. Pt was unable to squat. Her straight leg raise was limited to about 60 degrees bilaterally.

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 CFR 416.905.

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, the Claimant last worked in 2005. Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In the subject case, Claimant last worked in 1997. 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 showing a diagnosis of osteoarthritis, diabetes, asthma and depression. Claimant testified to physical limitations and Claimant’s physician indicated that Claimant is limited in her lifting, standing and walking. Claimant is furthermore, limited to no repetitive actions. 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. It is necessary to continue to evaluate the Claimant’s impairments under step three.

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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.04 *Disorders of the Spine* was reviewed. 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 the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting osteoarthritis, asthma, diabetes and depression. In fact, the independent medical examiner, hired by the Department, indicated in his [REDACTED] report that Claimant is unable to walk without a knee brace, squat, and has significantly limited range of motion in the shoulder, right knee and back.

In addition, Client is obese. As with any other medical condition, if obesity is a "severe" impairment alone or in combination with another medical determination physical or mental impairment(s), it can significantly limit an individual's physical or mental ability to do basic work activities. SSR 01-1p. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems.

Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. *Id.*

Claimant's prior employment included light industrial work, home care provider and packaging parts. All would be considered light work as each requires standing a significant portion of the day. Given the combination of Claimant's impairments, the undersigned finds the Claimant currently limited to sedentary work. Claimant is, therefore, unable to return to past relevant work in any of the above listed prior occupations. Evaluation under step five will be made according to the law.

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 at the level of sedentary work. Sedentary work is described as follows:

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.

20 CFR 416.967(a). Claimant's doctor recommended physical limitations that dictate that Claimant is limited to lifting less than 25 lbs occasionally throughout the day and standing/walking less than two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at forty-six is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant's education is "High school graduate or more – does not provide for direct entry into skilled work" and his previous work experience is unskilled. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c). In the present case, Claimant also had mental limitations in addition to her physical limitations and obesity. Claimant utilizes a cane and knee brace and relies on both for limited ambulation. Claimant has limited range of motion in her shoulder, knee and back. The IME doctor found that Claimant had significant

osteoarthritis in her lumbosacral region and right knee. Patient is unable to squat and also unable to do any repetitive type of movement.

This Administrative Law Judge finds that Claimant's impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. Claimant is unable to perform even the full range of activities for sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the Claimant must be considered. The combination of Claimant's impairments results in a severe impairment which limits Claimant's ability to work. 20 CFR 404.1529. Therefore, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at the fifth step.

Furthermore, the Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant's age, education and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, the Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA program.

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.

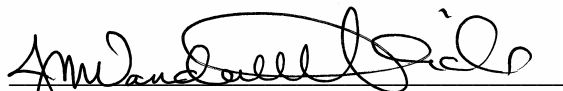
In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based 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 January, 2007 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 November, 2010.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/10/09

Date Mailed: 12/11/09

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:

