[redacted]

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.: 2007-18144
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
February 27, 2008
Wayne County DHS (41)

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, her husband and her representative [redacted] appeared at a hearing held on February 27, 2008 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the applications. 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), and retroactive MA-P for the months of October 2006 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 November 22, 2006 the Claimant applied for MA-P and SDA.

(2) On January 18, 2007 the Department denied the application; and on March 6, 2009 the SHRT guided by Vocational Rule 202.20 denied the application because medical records support the ability to perform a wide range of light work.

(3) On April 7, 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 forty-six years of age.

(5) Claimant completed grade 12 and Red Cross training as a CNA; and can read and write English.

(6) Claimant last worked in 2003 as a nursing assistant and prior as a laborer in a packing warehouse; and worked at a commercial laundry.

(7) Claimant has alleged a medical history of seizures with confusion, back/neck pain due to a MVA with neuropathy; and loss of memory, confusion and comprehension, obsessive/compulsive disorder with depression/anxiety and suicidal ideation

(8) October 2006, in part:

> FOUR DAY HOSPITAL COURSE: Admitted after ER treatment for mental status changes. Neurology: Seen and examined. Resting and doing well; without new complaints. Orientated times 3, CNS preserved EOM1. Negative facial asymmetry. TML. SP increased. UP/LE STR. MRI brain negative. Did not find any obvious cause for the black outs. MOA--E/U? Psyche etiology and recommendations noted that underlying mental issues need to be explored. No AEDS [Anti-convulsive medication] at this time with negative EEG. Neurologically stable for discharge. CT chest was positive for bibasilar infiltrates, questionable aspiration. CT lumbar

spine did show bulge at L5-S1 disk. Lab testing showed ETOH less than 5, salicitate level less than 4, acetaminophen less than 10, UDS positive for opiates. Attending: [redacted] Department Exhibit (DE) 1, pp. 12-25.

October: Office visit: Went to ER for spell of passing out; and was found to have seizure. No prior history. Now C/O short term memory loss. Physical Examination including extremities [All within normal limits.] Medications: [redacted] Claimant Exhibit p. F24.

(9) February, March and April 2007, in part:

February: Pulmonary Testing Results: Moderate restrictive ventilatory defect with moderately reduced FVC. [redacted]. Claimant Exhibit B8.

March: HISTORY; Presents with multiple medical problems. Smokes one pack per day 30 years.
PHYSICAL EXAMINATION: HT 66", WT 170 pounds, BP 130/64, alert, orientated, no acute distress, dressed appropriately and well groomed. Visual acuity with glasses 20/25 right and 20/20 left. HEENT, Respiratory, Cardiovascular, Gastrointestinal, Skin, Extremities, Bones & Joints, Neurologic: [All within normal limits.] Medications: [redacted]

April: HISTORY: Feels better from symptoms when she takes her medication. Saw psychiatrist 15-15 years ago but stopped; didn't like doctor. No psychiatric admissions. Counseling with her neurologist for last 12 years and comfortable with him and he prescribes her medications. Lives with husband who supports her with SSD.

Able to care for own daily chores, makes small meals and goes shopping with her husband. Adequately groomed and dressed. Decreased eye contact. Gait was slow but normal. Appears to be a little hard of hearing. MENTAL STATUS EXAMINATION/DESCRIPION: Results: DIAGNOSES: Axis I: Major depression disorder, recurrent in partial remission. Panic disorder, chronic. Prognosis: Fair. .Atul Shah, MD. DE 4, pp. 1-5

(10) July and August 2007, in part:

July: CURRENT DIAGNOSIS: Severe sinusitis, allergic rhinitis, Seizure disorder.

NORMAL EXAMINATION AREAS: General; Abdominal.
FINDINGS: HEENT, CONGESTED. Respiratory: bilateral wheezing and rales. Cardiovascular: NSR. Musculoskeletal, Neuro, Mental: refer to neurology.
PHYSICAL LIMITATIONS: Limited, expected to last 90 days or more; Lifting/carrying up to 20 pounds 1/3 of 8-hour day; never over 25 pounds; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, No fine manipulating or pushing/pulling; no use of either feet/legs for operating controls.
MENTAL LIMITATIONS: In comprehension, memory, sustained concentration, reading/writing. Can meet won needs in home.
Medications: [redacted] Claimant Exhibit D, pp. 1-2.

August: July: CURRENT DIAGNOSIS: Seizure, LS radiculopathy, cervical radiculopathy, obsessive/compulsive disorder.
NORMAL EXAMINATION AREAS: General; HEENT, Respiratory, Abdominal.
FINDINGS: Musculoskeletal: tenderness LS spine, weakness LE, SLRT, restricted C-S spine tender. Neuro: seizures: abn. EEG, Mental: anxiety, paranoia, obcessive/compulsive hand washing.
CLINICAL IMPRESSION: Deteriorating.
PHYSICAL LIMITATIONS: Limited. Lifting/carrying up to 20 pounds 1/3 of 8-hour day; never over 25 pounds; stand and or walk about 6 hour a day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, No fine manipulating or pushing/pulling; no use of either feet/legs for operating controls.
MENTAL LIMITATIONS: In comprehension, memory, sustained concentration, reading/writing. Can meet won needs in home.
Medications: [redacted] No bladder or bowel problems. [redacted]. Claimant Exhibit F, pp. 2-39.

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 SGA. 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not performing SGA since 2003. Therefore, the Claimant is not disqualified from 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 to support a finding that Claimant has more than minimal physical/mental limitations. See finding of facts 8-10. The impairments are expected to last a lifetime. The undersigned notes [redacted] for times periods in early 2008 were submitted but the doctor's DHS-49 was signed in August 2007. In April 2008, all systems were within normal limits. See Claimant Exhibit E3.

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 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. Listing 1.04 *Spinal disorder* and 12.04 *Affective Disorder* were reviewed because of supporting medical records. For Listing 11.02 *Epilepsy*, the Claimant's medical records fail to establish this condition. There was no appropriate medical testing establishing an abnormal EEG or a therapeutic level of anti-convulsant medication.

There was no medical evidence that hypertension has resulted in organ end damage to the brain, heart, kidneys or eyes. The undersigned's decision on Listing 1.04 was negative because the medical records failed to provide appropriate medical testing for cervical impairments. But for the lumbar spine, medical records in October 2006 report a disc bulge at L5-S1. There was not medical evidence establishing this bulge as compressing the spinal cord or spinal nerves. Listing 12.04 was reviewed; and the undersigned decided the Claimant's medical records failed to meet the intent and severity of this listing. Listing 12.00C. *Mental Disorder; Assessment of severity.*

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the activities of daily living; social functioning; concentration, persistence, or pace; and episodes of de-compensation. Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis.

The Claimant alleges memory, concentration impairments, which her doctors cite in their medical records. But these symptoms were not found by the independent medical examiners only two to three months earlier. See finding of fact 9.

In this case, this Administrative Law Judge finds the Claimant is not 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) prevents 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 in 2003 as a CNA at [redacted] for one year; and shipping and receiving earlier. Her doctors both opine the Claimant does not need a walking aid. See finding of fact 10; and that the Claimant can lift up to 20 pounds but not use her feet for operating foot controls. [redacted] did not find physical impairment in either the upper or lower extremities. The Claimant testified that she cannot return to any of her past work due to pain and confusion. The undersigned finds the Claimant cannot return to past relevant 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 NW2d 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 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 forty-six is considered a younger individual*;* a category of individuals age 18-49. 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 202.20, for *younger individual*, age 18-49; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is "not disabled" per Rule 202.20.

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 disability requirements under SSI disability standards, and prevent medium type employment for ninety days. This Administrative Law Judge finds the Claimant is "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 program, and retroactive Medical Assistance Program.

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: _[redacted]

Date Mailed: _[redacted]

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: [redacted]