

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. 2007-23215

Issue No. 2009; 4031

Case No:

Load No.

Hearing Date:

December 5, 2007

Wayne County DHS

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, a hearing was held on December 5, 2007. The Claimant and her friend, [REDACTED] [REDACTED] appeared at the Department of Human Services (Department) in Wayne County.

The record was left open to obtain new medical information. The undersigned issued an Interim Order for new medical information. No new medical records were received. The record closed. This 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 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 March 1, 2007 the Claimant applied for MA-P and SDA.
- (2) On June 6, 2007 the Department denied the application; and on October 31, 2007 the SHRT guided by Vocational Rule 202.14 denied the application because the medical records evidenced a capacity to perform simple, unskilled light work.
- (3) On July 26, 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-one years of age.
- (5) Claimant completed grade 12; and a BS degree in math with a minor in engineering; and can read and write English and perform basic math.
- (6) Claimant last worked in 2006 as a corporate quality control manager for an auto supplier; and for [REDACTED].
- (7) Claimant has alleged a medical history of left arm; shoulder to fingers, rib cage pain with decrease in strength and fatigue after lymph node radiation treatment for carcinoma.
- (8) January 2007, in part:

Treated for bilateral lymph node positive carcinoma of right breast with chemotherapy and postoperative radiation therapy. Developed chronic pain syndrome with chronic neuropathic pain in bilateral axilla and arms. Has undergone treatment for pain at Pain Clinic or Michigan. Pain is persistent and causes fatigue, difficulty in concentration and in my opinion is permanent. In June 2006 she kept working to the fall at which time she was eligible for full and complete disability. In September the patient was more fatigued; more depressed and had deteriorating performance. [REDACTED]
[REDACTED] Department Exhibit (DE) 1, pp. 21.

Admitted with vomiting. DISCHARGE DIAGNOSES: urinary tract infection; paralytic ileus, dehydration, Norwalk virus enteritis, Rotavirus enteritis, malaises and fatigue, mononeuritis arm, late effect of radiation, Dysthymic disorder. Physical Examination [Within normal limits.] Except lower left leg swelling. [REDACTED] DE 1, p. 19

(9) February 2007, in part:

Mental Status Evaluation: Continues to experience pain since ending of radiation treatment in February 2005. Not involved in mental health treatment. Current Medications: Neurontin, Percocet, Effexor, Compazine, Ativan, Clonidine, Bentyl, Cymbalta and Fentanyl.

HISTORY AND OBSERVATIONS: Unemployed since September 2006. Denies alcohol and drug use. Daily functioning depends on level of pain. When pain severe stays in bed. But cares for pets, takes medication, has breakfast, works on projects, goes on errands, does chores, has dinner, watches TV, independent in grooming and hygiene, cooks, does household chores and independent in managing financial matters. Gets family member help if unable to do tasks. Drove self alone to appointment, on time, ambulatory with slow movements, 70 inches tall and weighs 233 pounds, positive interactions with examiner, friendly, outgoing, and cooperative. Responses were reality based, normal motor activity and poor self-esteem. Expressed good insight into her condition.

Mental Status, Stream of Mental Activity, Mental Trend/Thought Content, Emotional Reactions, Sensorium and Mental Capacity, Memory, Orientation, Information, Calculations, Abstract Thinking, Similarities and Differences, Judgment: [All within normal limits.] Except: occasional suicidal thoughts with no imminent plans. AXIS I: Dysthymic Disorder. AXIS III: Cancer victim and pain. [REDACTED] DE 1, pp. 3-5.

(10) March 2007, in part:

CURRENT DIAGNOSIS: Breast CA bilateral. Severe bilateral neuropathic arm pain.
HT 69", WT 231, BP 95/59.
NORMAL EXAMINATION AREAS: HEENT; Respiratory; Cardiovascular. Abdominal, Musculoskeletal, Mental.

ABNORMAL: General: chronic fatigue and severe fatigue. Abdominal: [Illegible] . . . prior surgery. Musculoskeletal: pain bilateral axilla of arms. Neuro: weakness arms. Mental: chronic depression.

CLINICAL IMPRESSION: Stable but deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; No Lifting/carrying; no need for assistive devices; use of both feet/legs for operating controls. FINDINGS: pain and medications affect ability to function. Can meet own needs in home. MENTAL LIMITATIONS: Sustained concentration and social interaction. [REDACTED] DE 1, pp. 6-7.

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 September 2006. Therefore, 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 sufficient medical evidence to support a finding that Claimant has some upper extremity limitations. There was medical evidence of dysthymic disorder but no medical records established longitudinal mental health treatment or limitations; and ██████ found near normal function. See Finding of Fact 9.

The physical limitations are more than minimal and impact basic work activities. The medical evidence has established that Claimant has physical limitations that have more than a minimal effect on basic work activities. The Claimant’s physical impairments have lasted for the required duration of 12 months. See Finding of Facts 8-10.

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 impairment is a “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 undersigned’s decision was based on Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 *Musculoskeletal System*.

In this matter, medical records establish chronic pain syndrome of the bilateral upper extremities after radiation treatment for breast cancer. Medical treaters opine the condition is permanent. Function is the chief criteria to meet listings under 1.00. The Claimant does not meet

the intent and severity of this listing. The Claimant has full lower extremity functioning according to the medical records. [REDACTED] confirms full use of lower extremity function with operation of foot/leg controls. Other medical records establish upper extremity functioning even with pain. The Claimant does drive; and this establishes upper extremity function. The claimant told [REDACTED] of daily activities, which would involve use of the upper extremities. See Finding of Fact 9. Thus, the intent and severity of Listing 1.00 is not met.

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 him 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.

Here, the medical findings were normal for all body systems except the effected musculoskeletal impairments. The medical records report pain. Hospital records for January 2007 do not provide a basis for upper extremity limitations. Severe fatigue was opined by [REDACTED]. There were no lab results or medical testing that provided causation for fatigue. The Claimant testified at hearing to gripping/grasping with the right extremity, sitting for 30 minutes, standing 5 minutes and walking one block. The claimant testified being unable to return to past work due to decreased stamina and lifting problems. This is persuasive the Claimant cannot return to past relevant work requiring long standing or walking or heavy lifting.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 sedentary work because of pain and fatigue. See Finding of Facts 8-10. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

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 fifty-one is considered *closely approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.15, for individuals, age 50-54; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable [managerial]; the Claimant is "not disabled" per Rule 201.15.

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 medical evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevents other work activities 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 the State Disability 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: February 24, 2009

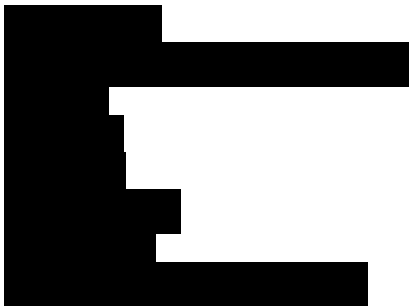
Date Mailed: February 26, 2009

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

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