

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. 2008-12553

Issue No. 2009

Case No: [REDACTED]

Load No. [REDACTED]

Hearing Date:

May 22, 2008

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 May 22, 2008. The Claimant and her friends [REDACTED] and [REDACTED] appeared at the Department of Human Services (Department) in Wayne County.

New medical information was reviewed by the State Hearing Review Team (SHRT) and the application was denied. The matter of disability is now before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (MA-P) program and retroactive MA-P for the month of September 2007 program?

FINDINGS OF FACT

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

- (1) The Claimant filed an application for MA-P on October 10, 2007.
- (2) On November 26, 2007 the Department denied the application; and on July 21, 2008 the SHRT denied the application finding medical records supported the capacity to perform a wide range of light/medium work per Vocational Rule 203.28.
- (3) On January 2, 2008 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-one years of age.
- (5) Claimant completed grade 12 and currently doing on-line schooling; and can read and write English and perform basic math.
- (6) Claimant last worked in [REDACTED] as an apartment maintenance provider, has been a finish carpenter, doing lawn service, was a cashier, test drove vehicles and was a cook.
- (7) Claimant has a medical history of pain due to a back disc problem, right knee won't bend, pain in right toes, blood clots left arm, episode of a seizure, episodes of falling, shaking and decrease of concentration.
- (8) [REDACTED], in part:

Admitted for fall in which lost consciousness with sweating and tremors. History of seizures in [REDACTED] but not on medication. 2-D echo and carotid Doppler were normal. Found to have urinary tract infection. EKG did not show ST changes and tropins were negative. Blood work was positive for THC and opiates. Admits use of marijuana. Denies alcohol or drug IV use. History of back pain. Physical Examination: [Within normal limits.] Gait normal. EEG: minimally abnormal slowing nonspecific in nature. No local

or generalized epileptiform discharges are recorded. Advised to quit smoking and no driving for six months seizure free. Put on Dilantin and Vicodin. [REDACTED]

Admitted one week ago for seizure; and discharged home in stable condition, but returned with pain left upper extremity at IV site. She was anti-coagulated, placed on antibiotics and had resolution of symptoms. To follow up with PCP for follow up of seizures. Discharge Diagnoses: Left upper extremity deep venous thrombosis; Cellulitis, Seizure Disorder. Medications: Coumadin, Tegretol, Keflex. Follow with PCP. [REDACTED]. Department Exhibit (DE) 1, pp. 11-76.

(9) [REDACTED], in part:

[REDACTED]: To [REDACTED]: C/O back pain. Physical Examination: [within normal limits.] Except decreased range of motion and muscle spasms back; and pain on straight leg raising. Diagnosis: chronic low back pain. Medications prescribed. Discharged home in stable condition. [REDACTED]. DE 3, pp. 10-23

[REDACTED]: To [REDACTED]: C/O suicidal thoughts. Got upset with girlfriend. Positive for use of marijuana and smoking cigarettes. Physical Examination: [Within normal limits.] Except small laceration left foot. Petition signed for transfer to psych as danger to self. [REDACTED] DE 3, pp. 10 -76

(10) [REDACTED], in part:

History of low back pain since injury in [REDACTED] now radiating down right lower extremity to foot/toes. Medication: Depacote and Cymbalta. Physical Examination: Alert, oriented, cooperative coherent. No acute distress. HT 5'11", WT 181, BP 130/80, Vision with contact lenses 20/20 both eyes.

Tenderness present in LS spine. No spasm. Lumbopelvic rhythm was painful and somewhat impaired. Straight leg raising was 35 degrees left and 25 degrees right and positive for back pain. Upper extremity dexterity was normal and grip strength was 5/5 bilaterally. Muscle strength lower extremities was 4+/5 on right secondary to pain. Left side normal. No pathological reflexes. Sensory was intact. Coordination intact. Gait was slightly antalgic with symmetrical weight bearing. Not using ambulatory aid and not in need except long distances. Can do heel, toe and tandem walk. Able to do squatting. Can dress, undress, and get on/off exam table. Presents with chronic radicular low back pain with

definite sciatic radiation on today's exam. [REDACTED] [REDACTED]
[REDACTED].

Lumbar spine X-rays: IMPRESSION: Degenerative Spurring. Disc spaces well preserved. No osteolytic or blastic changes. Without evidence of fracture [REDACTED]. DE 3, pp. 1-7.

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 [REDACTED]. Therefore, 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 medical evidence of physical limitations due to degenerative changes of the low back. See Finding of Fact 10. The medical evidence has established that the Claimant has more than minimal limitations, the undersigned finds a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s physical impairments has lasted continuously for twelve months. There was no medical evidence of mental limitations on ability to do basic work activities after [REDACTED]; and no medical records of a prior history of mental impairments preventing basic work activities.

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 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.

The Claimant suffered a seizure in [REDACTED]; and was prescribed medication, which the medical records indicate she continues to take. There was no medical documentation of seizures after [REDACTED]; and no medical evidence of a physical limitation due to seizures. There was no medical record evidence of subsequent blood clots. Plus [REDACTED] found and reported the Claimant was functional with both upper extremities.

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 Listing 1.00 *Musculoskeletal System*.

The Claimant's physical impairment is at the low back with pain on range of motion especially right sided. To meet the intent and severity of listing level, the medical records must contain evidence of impairments preventing SGA because of a loss of function. 1.00B. *Loss of function.*

1. *General.* Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; . . .

2. *How We Define Loss of Function in These Listings*

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. . . . We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. *What We Mean by Inability To Ambulate Effectively*

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

In this case, the Claimant's medical records do not establish that the Claimant has an inability to ambulate or a loss of function of both of her lower extremities. There was no medical evidence of a loss of function of the right and left upper extremities. See Finding of Facts 8-10.

This Administrative Law Judge, based on the medical records, 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/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.

Here, the medical findings were essentially normal for all body systems except low back limitations of range of motion and pain on certain movements. ██████ opined the Claimant does not need an ambulatory aid except for long ambulation periods. There were no lifting limitations in the medical records. But most of the Claimant's past work was quite active in standing and movement. Based on the past work activities, the undersigned finds the Claimant cannot return to past work. Analysis under step five is necessary.

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 the Claimant does have pain. 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 forty-one is considered a *younger individual*; a category of individuals age 18 to 49. 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 201.28, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “not disabled” per Rule 201.28.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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.

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 2, 2009

Date Mailed: February 4, 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

cc:

