

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-15211
Issue No.: 2009, 4031
Case No.:
Load No.:
Hearing Date:
July 23, 2008
Chippewa 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 July 23, 2008. The Claimant, a friend and her mother appeared at the Department of Human Service (Department) in Chippewa County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. 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) program, and retroactive MA-P for July, August and September 2007 and State Disability Assistance (SDA) 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 and SDA on October 4, 2007.
- (2) On December 11, 2007 the Department denied the application; and on December 9, 2008 the SHRT guided by Vocational Rule 203.28 denied the application because medical records indicated a capacity to perform medium work.
- (3) On February 14, 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-five years of age.
- (5) Claimant completed grade 11 and a GED; plus one year of college in computer programs; and can read and write English and perform basic math.
- (6) Claimant last worked in 2001 doing optician type work and prior was a stay at home mother.
- (7) Claimant has alleged a medical history of back pain due to an injury and childbirth, bipolar disorder with on/off treatment, fibromyalgia, type 2 diabetes, minor neuropathy.
- (8) July, October and November 2007, in part:

July 2007: Follow up from ER visit. X-rays and CT spine show no acute fracture cervical spine and X-rays lumbar spine, sacrum and coccyx report no change from previous report which showed moderate degenerative disease. Continue [REDACTED] and [REDACTED]. And rest off feet, heat low back and return if not improving. [REDACTED] Department Exhibit (DE) 1, pp. 1-115

October 2007: Follow up from WMH visit for wheezing and nasal congestion. History of asthma and using inhalers on regular basis. BP 112/74. Physical examination: [Within normal limits.] Except Lungs have prolonged expiratory phase, faint wheeze right upper lobe. Oxygen saturation 97% room air. DX: Asthmatic bronchitis. Increase fluid intake. Continue meds as prescribed. [REDACTED] [REDACTED]. DE 1, pp. 116-133.

November 2007: In to office C/O leg weakness; without any falls. Physical Examination: BP 124/70, HT: 70", WT: 273. Feet with good pulses, skin intact, structure normal, sensitivity intact, DTRs in lower extremities are normal.

Lungs decrease breath sounds bilaterally but no crackles or wheezes. Completed one form saying she couldn't work for 90 days. To continue [REDACTED] and [REDACTED] and will arrange pulmonary function test. I am unable to provide good explanation for leg weakness, will arrange for EMG and nerve conduction of bilateral legs. [REDACTED]. DE 1, pp. 134-152.

(9) January to September 2008, in part:

February: C/O vocal pitch breaks and intermittent hoarseness for several years. No difficulty swallowing or choking sensation. No therapies tried. Years of smoking and asthma. Laryngoscope showed no mass of mucosal lesion. Right TVC paralysis with overriding medial zed arytenoids versus Teflon. Elective surgery, if desired. [REDACTED].

February: EMG of legs: INTERPRETATION: length dependent sensorimotor neuropathy consistent with diabetic neuropathy.

February: Blood test results: Glucose High—231 in range of 70-100.

February: X-ray back: IMPRESSION: LS spine degenerative changes. Normal sacrum and coccyx. [REDACTED]

March: X-ray chest: IMPRESSION: Normal: Mediastinum, lung expansion, soft tissue, pulmonary vasculature, osseous structures, sub diaphragmatic. No lymphadenopathy, focal consolidations, pulmonary edema or nodular density, pneumothorax. Mild peribronchial thickening is noted. [REDACTED]

January: Patient states she suffers from addictive tendencies including alcohol and drugs and participates in NA and AA meetings. It is of interest to note that she states she stopped using drugs or alcohol at age 17. Stopped seeing [REDACTED] for psychiatric treatment due to dissatisfaction. Social History: Tobacco usage is one and one-half packs per day for approximately 30 years. Alcohol and drugs none since teenage years. [REDACTED]. DE 1, pp. 53-55.

June: "I'm doing fine." To session in wheelchair accompanied by service dog. To have surgical procedure right wrist. Alert

orientated times 3. Mildly dysphoric mood with superficially bright mood with congruent but constricted affect. Concentrated on current physical ailments. Home life now includes her bipolar son with conflicts. Denies suicidal, homicidal or assaultive ideation or intent. No manic or hypomanic episodes since last session. No internal stimuli or delusional thought content. Assessment: Bipolar Affective disorder, Mood disorder secondary to medical condition. Continue current therapies without changes. [REDACTED]

August: Ten year history of bilateral ankle tendonitis status post operative procedures. Both tendons appear intact and ankles stable with inversion and eversion. No gross instability of left ankle. Takes anti-inflammatory. Will try heel lift in or out of shoe and gentle stretching exercises and physical therapy. Return as needed. [REDACTED]

September: CT brain: IMPRESSION: Unremarkable scan for age. September: CT scan cervical spine: IMPRESSION: No CT evidence for traumatic injury of cervical spine. Mild bilateral foraminal stenosis in lower cervical spine. Central spinal canal is patent. [REDACTED]. DE N, pp. 1-107.

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. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not working since 2001. 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 sufficient medical evidence to support physical/mental limitations that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted 12 months.

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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned’s decision was based on Listing 3.00 *Respiratory System*, 12.00 *Mental Disorders* and 1.00 *Musculoskeletal System*. There were no pulmonary function test results; and according to the medical records the Claimant is smoking but on inhalers and medications. For Listing 12.00, the symptoms of 12.00C, loss of function due to mental impairments are not consistently present in the medical records. There was evidence for good function toward the Claimant’s ability to progress toward life needs i.e. cooperate with

attention to appearance and timely to any medical appointments. Listing 1.00 requires a loss of physical function of both the upper and lower extremities. That loss of function was demonstrated in the medical records. See finding of fact 8-9. But at hearing in July 2008, the Claimant testified to walking two days a week one-half to three quarter block and tha [REDACTED] [REDACTED] recommends exercise. The Claimant testified to using a walker. There were no medical records submitted that established need for using assistive walking devices but shoes lifts were recommended as well as physical therapy. See finding of facts 8-9

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/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 evidence supports asthma with episodic breathing problems, lower extremity neuropathy and mood disorder. The Claimant testified that she cannot return to past work as optician because of the work requirements of specific calibration and medication she was taking prevents concentration [REDACTED] found the Claimant unable to return to work for 90 days in November 2007. This time period equates to February 2008. See finding of fact 8-9.

Additionally the undersigned notes inconsistent statements by the Claimant regarding her smoking. At hearing the Claimant testified to no smoking since 2003 but in January 2008, [REDACTED] reported one and one-half pack per day for 30 years. This inconsistency in the facts damages the Claimant's credibility in the testimony at hearing. But given the numerous medical treatment records for every body part from head to foot, the undersigned will not return the Claimant to past 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 sedentary work. 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-five is considered a *younger individual*; a category of individuals age 45-49. 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 201.18, for younger individual, age 45-49; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.18.

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 State Disability 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: 04/29/09

Date Mailed: 04/29/09

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 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

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