

[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.: 2008-17498

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

September 11, 2008

Wayne County DHS (35)

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 appeared at a hearing held on September 11, 2008 at the Department of Human Service (Department) in Wayne County, District 35.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application based on a hearing withdrawal submitted by [REDACTED] But the Claimant's right to a hearing continued in spite of her representatives' withdrawal.

An Interim Order was issued and new medical records and independent medical exam were not submitted. The record closed. 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), retroactive MA-P to June 2007 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) In September 25, 2007 the Claimant had filed an application for MA-P and SDA.
- (2) On January 2, 2008 the Department denied the application; and on June 13, 2008 the SHRT denied the application based on insufficient medical records.
- (3) On March 31, 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 fifty-one years of age.
- (5) Claimant completed grade 12 and one semester of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2004 performing direct care services, has experience as a cashier and in dietary.
- (7) Claimant has alleged a medical history of coronary artery disease (CAD), chronic obstructive pulmonary disease (COPD) hypertension, back pain, glaucoma right eye, and non-insulin dependent diabetes mellitus (NIDDM).
- (8) June 2007, in part:

Admitted for intermittent non-exertional central chest pain for last few days. Used a sublingual nitroglycerin without significant benefit. Also having shortness of breath on exertion like climbing stairs. Past history for CAD with coronary artery stenting,

hypertension, high cholesterol, myocardial infarction, COPD, diabetes mellitus, glaucoma, obesity, mitral regurgitation, degenerative joint disease. PHYSICAL EXAMINATION: [Within normal limits.] Except: obese abdomen. Diagnostic Impression: Unstable angina. Abnormal EKG considers inferior and anteriolateral ischemia. [REDACTED]

CONSULTATION: Significant for multiple hospital admissions with recurrent chest pain. Having problem controlling blood sugar. On admission had diffuse wheezing bilaterally with coughing, increasing dyspnea on exertion. Cardiac catheterization in February 2007 and was told had 50% stenosis in right coronary artery. Presently she is chest pain free. EKG shows no significant difference since June 2007. Blood sugar was 555, BUN 4, creatinine 0.7. Assessment: uncontrolled diabetes mellitus. Continue medications aspirin, Plavix, beta-blocker, statin and Ace inhibitors. [REDACTED]

MRI brain stem: IMPRESSION: Evidence of sinusitis acute or chronic. Few nonspecific white matter signal hyper intensities probably age related

Head: IMPRESSION: Diffusely present multiple areas of signal dropout may be artifactual.

Neck: IMPRESSION: Internal carotids appear normal. Could be stenosis with external carotids bilaterally. [REDACTED]
Department Exhibit (DE) 2, pp. 1-7 and DE 1, pp. 12-18 and 9-11.

(9) September 2007, in part:

FINAL DIAGNOSIS: Coronary artery disease. Hypertension. Diabetes mellitus Type 2.

Came in with chest pain after going to the casino after a family argument. Relieved with nitroglycerin but returned. Took 6 nitroglycerins then called EMS. Last time was to have had cardiac cauterization but left AMA before procedure.

PHYSICAL EXAMINATION: BP 201/109. Awake, alert, orientated times 3, no respiratory distress. HEENT, Neck, Heart, Thorax/Lungs, Abdomen, Extremities, Neurologic: [all within normal limits.]

Decision was made to manage her medically; and she was discharged with stable vital signs, BP 120/66. Tolerated food well,

could walk and no chest pain noted. Sent home with aspirin, Spiruva, Advair, Zocar, Norvasc, Plavix, nitroglycerin, Actoa, Imdur and Tylenol 3. To follow up at [REDACTED] in 3 weeks. Advised to low sodium diet and diabetic ADA diet.

[REDACTED]
DE 1, pp. 6-8.

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.

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 engaging in SGA since 2004. 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has some physical limitations. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant's impairments are expected to last more than 12 months. See finding of facts 8-9

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 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 Listing 4.00 *Cardiovascular System*.

In this matter, the lack of medical records failed to establish the intent, severity and criteria of Listing 4.00. The Claimant has hypertension, breathing problems, glaucoma, NIDDM but the lack of medical records failed to establish the severity of these impairments or that these impairments resulted in end organ damage, loss of physical function or loss of eye sight. The undersigned notes the Claimant testified to independence in ADLs and was able to travel to the casino in September 2007.

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 of lack of medical records to establish the severity or marked difficulties needed to establish a listing level impairment. 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 supported some cardiac dysfunctions, shortness of breath, right eye glaucoma and diabetes mellitus. But on medical treatment when hospitalized, the Claimant became stable. The Claimant complained of pain in her back. But there was no medical assessment of this as a loss of function. The Claimant was noted to be walking at the time of discharge in September 2007. See finding of fact 9

The Claimant testified to 30 minutes of sitting, up to 15 minutes of standing, walking for ½ blocks and lifting up to 10 pounds. Given this testimony, the undersigned will not return the Claimant to past relevant work in direct care services. Evaluation 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 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 based on the cardiac and breathing problems. See finding of facts 8-9. 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 is considered *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 201.12 for approaching advanced age, age 50-54; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, unskilled or none; the Claimant is “disabled” per Rule 201.12.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 sufficient evidence to support a finding that Claimant's physical impairments meet the disability requirements under SSI disability standards and prevent substantial gainful activities for ninety days. This Administrative Law Judge finds the Claimant is "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 "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 September 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 **six months** due to the lack of medical records, in September 2009.

/s/ _____
Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

2008-17498/JRE

Date Signed: 03/31/09

Date Mailed: 03/31/09

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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