

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. 2008-17614
Issue No. 2009
Case No: ██████████
Load No. ██████████
Hearing Date:
July 31, 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 July 31, 2008. The Claimant and her representative ██████████ appeared at the Department of Human Services (Department) in Wayne County.

The record was left open to submit additional medical information. The closure date was waived on the record. 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?

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 August 30, 2007 the Claimant applied for MA-P.
- (2) On January 12, 2008 the Department denied the application; and on December 17, 2008 the SHRT denied the application finding the medical records established the ability to perform to past work.
- (3) On April 7, 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 sixty-one years of age.
- (5) Claimant completed grade 8; and can read and write English and perform basic math skills.
- (6) Claimant last worked in 2000 performing factory work, sweeping, running machines; and before worked 15 years at a tobacco factory.
- (7) Claimant has alleged a medical history of arthritis with pain of left knee, right shoulder, hand, thumb with bilateral foot swelling and pitting edema, back pain, hypertension, diverticulitis and anemia.
- (8) August 2007, in part:

ER with C/O difficulty breathing and abdominal pain with long history of diarrhea and gas. History of hypertension and diabetes. Hypoxic and tachycardia with abnormal potassium. To ICU where was intubated and had dialysis for acute renal failure, metabolic acidosis, cardiomegaly by X-ray but lungs clear; and marginal osteophytes of lumbar spine consistent with some degenerative changes; and few sigmoid diverticula without inflammatory changes; and ECG morphology was normal with PR interval normal at 0.14. Lab data improved with re-hydration and had rapid response to supportive care. Discharged after twelve days in satisfactory condition. Medications: Protonix, Norvasc, hydralazine, iron, Flexeril, Lantus sub q, low sodium and low fat; and 1,800 ADA diet. To follow with PCP and cardiology [REDACTED]

[REDACTED] Department Exhibit (DE) 1, pp. 12-53.

- (9) January 2008, in part:

Saw in office [Have been seeing her in office since October 2007] with history of uncontrolled hypertension and renal insufficiency since taking medication, BP has improved. BP 140/70, weight was 214 pounds. Eyes, eye muscles, Jugular venous, hepatojugular reflex, Neck, Heart, Lungs, Abdomen, Liver, Spleen, Neurologic: [All within normal limits.] Except some shortness of breath probably secondary to diastolic hypertension; and will prescribe Lasix. [REDACTED] DE 1, pp. 1-5.

- (10) September 2008, in part:

HISTORY: Denies history of: stroke, dizziness, blackouts, seizures, thyroid problems, heart problems, heart attack, chest pain, asthma, TP, emphysema, use of oxygen, inhalers and breathing machine, ulcers, kidney and liver problems, jaundice, cirrhosis, pancreatitis, drug and alcohol use, gout, blood clots, fractures, leg ulcers.

Stated has headaches, fluctuating blood sugars, pain in epigastria area, shortness of breath on walking one block and stair climbing, appetite good, weight stable, feet and ankle swelling, arthritis pain of left knee, right hand and shoulder and fingers,

PHYSICAL EXAMINATION: Alert, cooperative but anxious. Weight 217, height 5'2", BP 200/80. Vision without glasses 20/40 left, 20/40 right. HEENT, CHEST, CARDIOVASCULAR, ABDOMEN, BONES & JOINTS, NERVOUS SYSTEM: [All within normal limits.] Except: heart has II/VI systolic murmur without radiation. Air entry is decreased both sides. Left knee has pain, stiffness and crepitus. Flexion and extension was 0-100 degrees. Right knee normal. Could raise both arms above head level. Gait normal. Able to get on/off exam table with minimal dyspneic. General health is good but she has obesity. [REDACTED].

[REDACTED] Claimant Exhibit G, pp. 1-3.

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, the Claimant testified to not performing SGA since 2000. Therefore, the undersigned finds 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has more than slight abnormalities that are physical limitations on her abilities to perform basic work activities. See Finding of Facts 8-10. The medical evidence has established that Claimant has physical limitations that have more than a minimal effect on basic work activities. There was no medical evidence of a mental impairment that would affect performance of basic work activities. 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 physical impairments are 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 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.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. Listing 1.00 *Musculoskeletal System* was reviewed for the loss of function described in the medical records related to shortness of breath on physical activities. There were no medical records establishing lung disorders. But clinical exams found decreased air intake. There was no medically established sensory loss of either upper or lower extremities due to diabetes. Hypertension was established as uncontrolled. But there was no medical records establishing end organ damage due to hypertension of the heart, brain, kidneys or eyes in September 2008. Kidney failure was resolved with medical treatment and did not re-occur. Obesity was established.

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 according to the medical records, the physical impairment does not meet the intent or severity of the listings. 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 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 included work was last in 2000 in factoring running machines. Given the statements of the claimant to [REDACTED], the undersigned finds this persuasive to a finding 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 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.

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 based on [REDACTED] exam and after reviewing Claimant Exhibits A, B, C, D and E. 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 sixty-one is considered *advanced age*; a category of individuals age 55 and over. 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 201.01, for individuals of *advanced age*, over 55; education: limited or less; previous work experience, unskilled or none [No work since 2000]; the Claimant is “disabled” per Rule 201.01.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 “disabled” for purposes of the Medical Assistance based on 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 August 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and her representative 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 February 2010.

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

Date Signed: February 26, 2009

Date Mailed: March 2, 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:

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