

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.: 2008-18679

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

August 25, 2008

DHS County:

Kent 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 August 25, 2008. The Claimant and her friend [REDACTED] appeared at the Department of Human Service (Department) in Kent County.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records; and 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) program 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 April 4, 2007; and a previous application filed in December 2006 was denied.
- (2) On March 20, 2008 the Department denied the application; and on June 17, 2008 the SHRT denied the application finding non-severe impairments per 20 CFR 416.920 (c).
- (3) On April 4, 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 thirty-nine years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2004/2005 as home care provider and previously at a greenhouse.
- (7) Claimant has alleged a medical history of seizures in [REDACTED] after a head injury, decreased range of motion in right and left knees, breathing problems and emotional episodes treated with Ativan and Seroquel.
- (8) [REDACTED], in part:

First Visit: Seen for a number of complaints. History of "spells" felt at various times to be seizures and has been on Dilantin. EEGs were always normal as was MRI. She did not follow up with monitored sleep studies at [REDACTED]. Noted, is that it was difficult to get accurate history from patient. States has episodic chronic tremors and headaches. On Darvocet for 30 years; and takes Trileptal but not taking Dilantin or other epileptic medications. Smoker and states down to 1/3 pack per day.

Physical Examination: BP 110/70, Full EOMs, Fundoscopic shows sharp disc margins but no retinopathy. Pharynx, Tongue, Neck, Chest, Heart, Abdomen, Extremities, Motor strength, Heel to shin,

Gait, Left knee reflexes, Blood chemistries, TSH, CBC: [All within normal limits.] Except: not good effort at SLR, abnormal lipids.

Records of other physicians indicate anomalous vascular malformation Lesions on MRI not amenable to surgical intervention and not causing problems. Seizures disorder, Tremors: unclear whether had true seizures or pseudo seizures or if tremors related to neurological disorder. She does not want work up and feeling getting along all right without medications. [REDACTED]

[REDACTED] Department Exhibit (DE) 1, pp. 61-63

[REDACTED]: CURRENT DIAGNOSIS: Arthralgias—Myofacial—Fibromyalgia, Osteoarthritis, Seizure disorder with pseudo seizures. Antalgic moving, Anxiety, Depression.

HT: 63", WT: 140, BP 110/71.

NORMAL EXAMINATION AREAS: Respiratory; Cardiovascular, Abdominal.

FINDINGS: HEENT: watery eyes. Musculoskeletal: poor coordination. Neuro: difficulty with heel to shin wide gait. Mental: anxious, depression.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying less than 10 pounds 2/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; no assistive devices are needed; no use of either hand/arms for simple grasping, reaching, pushing/pulling; no use of either feet/legs for operating controls. Can meet own need in home. MENTAL LIMITATIONS: None but anxiety, depression. Medications: Trilentil, Lovastine, Cymbalta, Darvocet, Motrin, Trammadol. [REDACTED] DE 1, pp. 14-15

(9) [REDACTED], in part:

[REDACTED]: MEDICAL NEEDS: DIAGNOSES: Reactive airways, no overt wheezing, probably related to smoking. Continued arthralgias, myalgias et cetera. Probably consistent with fibromyalgia vs multiple joint osteoarthritis. Headaches may be stress component. Left ear pain. Abnormal lipids. GERD, Seizures vs pseudo seizures; and stable. Dizziness: nothing seen on exam. Difficulty on heel to toe gait. Cranial nerves: intact. Current Medications: Simvastatin, Seroquel, Vicodin, Symbicort.

Stopped anti-convulsant medications in [REDACTED]; did not take medications except Ativan in [REDACTED]; and in [REDACTED]

█ not taking medications except Simvastatin. █. DE 1, pp. 4 and 11-13.

Chronic ongoing illness will last lifetime. Ambulatory, no need for special transportation or to have someone help at medical appointment or help at home chores. Cannot return to past work or any other work. █ DHS-54A.

█: PSYCHOLOGICAL EVALUATION: C/O continuing “seizures.” Not taking Trileptal which helped. Taking Seroquel. OBSERVATIONS: Gait and movements were normal, fluent speech, focused thoughts, remote and current memory intact. Fully orientated. No intrusions into thought process or seizures. Completed evaluation without complaints or fatigue.

States lives with boyfriend and cares for him; and enjoys making trails through the woods, has a big garden, cooks, does all ADLs and feeds dogs and does all routine household chores.

Test results: very low grade anxiety and depression. Marked somatic physical symptoms. Ongoing “seizure” activity is currently untreated; and interrupts her life. If her seizures are arrested she would have the capacity to work but untreated she is not able to make predictions or sustained effort and employability is jeopardized. Axis I: Adjustment disorder with mood anxiety and depressed mood. █. DE 1, pp. 33-39

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 that to not performing SGA since 2004/2005. 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 medical evidence to support some medical testing and treatment for episodes of seizures or pseudo seizures. The medical evidence supports the Claimant’s treatment for multiple physical complaints with diagnosis that was unclear to the doctor. See finding of fact 8. [REDACTED] opined the Claimant had marked physical somatic complaints. The medical evidence supports the Claimant has a physical/mental impairment that has more than a minimal effect on 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 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 11.00 *Neurological System* and 12.00 *Mental Disorders*.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the fact that the Claimant retains physical functions; and does not have loss of function as required by 1.00. See finding of fact 9; [REDACTED] evaluation/report of the Claimant's physical functional abilities. [REDACTED] opines the Claimant would be able to work if the Claimant was treated for "seizures." [REDACTED] calls these events pseudo seizures and according to the medical records, [REDACTED] has reviewed the medical testing. The Claimant stopped taking anti-epileptic medications back in [REDACTED]

20 CFR 416.930 discusses the need to follow prescribed treatment:

(a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, can reduce your functional limitations so that they are no longer marked and severe.

(b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

Inability to pay for medications is not a defense to failure to follow prescribed treatment that would bring about the ability to perform SGA.

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 complains of hand tremors, “seizures” various pains nominated arthromyalgias by [REDACTED]. The Claimant’s last work was home care. At hearing the Claimant testified she could not return to home care due to decreased memory [REDACTED] and decreased ability to lift. The undersigned accepts this testimony and does not return the Claimant 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 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 thirty-nine 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 201.27, for younger individual, age 18 to 49; education: high school graduate; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.27.

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: 04/06/09

Date Mailed: 04/07/09

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

cc:

