

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.: 2008-23001

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

October 30, 2008

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 October 30, 2008 at the Department of Human Service (Department) in Kent County. The Claimant appeared with a translator, [REDACTED], for the hearing.

New 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) 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) On April 3, 2008 the Claimant applied for MA-P and State Disability Assistance (SDA) and was granted SDA benefits per Michigan Rehabilitative Services.

- (2) On May 12, 2008 the Department denied the application; and on March 9, 2009 the SHRT guided by Vocational Rule 202.16 denied the application because medical records were evidence for the capacity to perform light, unskilled work.
- (3) On June 10, 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-eight years of age.
- (5) Claimant completed grade 6 in Mexico; and came to live in the US 35 years ago; and can read with help but not write English and perform basic math.
- (6) Claimant currently works part-time as a machine operator 4 hours per day, five days a week, earning [REDACTED] per hour or [REDACTED] per month [REDACTED]; and last full-time work was in 2006.
- (7) Claimant has alleged a medical history of low back pain after a second surgery in 2006, with decreased range of motion and pain in her neck, shoulders and both legs; and anxiety and depression.
- (8) March and June 2007, in part:

March: MRI dated 03.05.07 shows multilevel lumbar spondylosis with slight central disc protrusion at L3-L4, L4-L5, and L5-S1. No obvious neural foraminal stenosis and no significant central stenosis. In regards to cervical spine, MRI shows disk herniation at C3-C4 has decreased on side since 12/06. Some pathology in central canal stenosis at all disk levels from C3-C6 and she is at risk for cervical cord damage if involved in flexion/extension trauma to the neck. But left shoulder is causing the most problems with diminished range of motion, strength and pain with overhead activities. Advised to continue home exercises and see pain management for low back pain. In regards to left shoulder, there was possible osteoarthritis and rotator cuff pathology. [REDACTED]

June: Follow up of left shoulder and injection seemed to help a lot and now greatly improved. Only pain on sudden movements. Still

complains of neck pain. [REDACTED] Department Exhibit (DE) 1, pp. 31-63.

(9) October 2008, in part:

CURRENT DIAGNOSIS: Cervical radiculopathy. Lumbar radiculopathy. Chronic pain. Blood pressure: WT: 155, BP 106/62.

NORMAL FINDINGS: HEENT, Respiratory, Cardiovascular, Abdominal.

FINDINGS: pain level more/less 5 at rest. Musculoskeletal: radicular pain, slight weakness right LS distribution. CS radiculopathy pain. Neuro pain, cervical, lumbar pain. Depression , chronic pain.

MRI: Cervical Spine: IMPRESSION: Developmental narrowing of CS canal with superimposed degenerative changes. Moderate generalized acquired reduction in thecal sac caliber seen from the C3-C4 and C5-C6.

CHARACTERISTICS OF IMPAIRMENT: Deteriorating.

PHYSICAL LIMITATIONS: Limitations expected to last more than 90 days. Lifting/carrying up to 10 pounds 1/3 of 8-hour day, never 20 or over. Standing and/or walk 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, fine manipulating no reaching, pushing/pulling; no use of either feet/legs for operating controls.

MENTAL LIMITATIONS: None. Can met won needs at home. Medications: Cymbalta, Norcco, Xanax. [REDACTED] [REDACTED] DE N, pp. 2-5.

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 earning wages in the amount of [REDACTED] per month. See finding of fact 6. This amount does not equal SGA 2008 monthly amounts of \$940. Therefore, the Claimant will not be 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 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has physical limitations due to impairments of the cervical and lumbar spine; and the impairments have more than a minimal impact on basic work activities. According to the medical records, Claimant’s impairments have lasted continuously for over twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s 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 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. In this matter, the medical records establish facts of impairment due to the musculoskeletal system. Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 1.00 *Musculoskeletal System* was reviewed.

After reviewing the criteria of the listings, the undersigned finds the Claimant's medical records do not substantiate that the Claimant's impairments meets the listing requirements of 1.04: *Disorders of the Spine* because there was no medical evidence of the compromise of a nerve root, or the spinal cord; marked limitations of motion of the spine, motor loss or marked muscle weakness with sensory and reflex loss, positive straight leg raising; and resulting on loss of function, as defined in 1.00B2b. Also see DE 1, pp. 64-67; and April 2008 independent medical exam by [REDACTED]

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. 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 current employment is part-time and involves lifting parts and operating a machine. [REDACTED] opined in October 2008, the Claimant could lift 10 pounds and stand 6 of 8 hours a day. See finding of fact 9. The Claimant has been working, by her testimony, 20 hours per week. In the medical record there was some reference to working 9 hours a day; and the effect on her as fatigue. But the medical records do establish that with this work, the Claimant does not have to read/speak English. The Claimant can read and does read books in Spanish. The SHRT discredits the limitations of [REDACTED]. The Claimant can do household chores and drive a vehicle.

Based on [REDACTED] opinion in April 2008: "Neck and Back pain: much of this now appears to be myofascial but could not R/O facet arthropathy. . . did not have radicular symptoms . . . repetition movements at work possibly aggravate symptoms and depression is contributing to her disease process." Based on the April 2008 examination of [REDACTED], the undersigned decides the Claimant can do current work, full-time; and is not disabled at step four.

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 past relevant 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 and State Disability Assistance programs.

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: 03/24/09

Date Mailed: 03/27/09

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:

