

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: 200825102
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 1, 2008
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 December 1, 2008.

ISSUE

Was the denial of claimant's application for SDA for lack of disability correct?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant initially applied and received SDA benefits until August 14, 2007.
- (2) On January 9, 2008, a hearing was held before an Administrative Law Judge, and the termination of SDA benefits was upheld.
- (3) Claimant reapplied for SDA benefits on April 23, 2008.
- (4) Claimant is 47 years old.

- (5) Claimant has a high school education and one year of college.
- (6) Claimant is not currently working.
- (7) Claimant has a prior work history consisting of a cashier and a pet groomer.
- (8) Claimant was diagnosed and treated for breast cancer in 2005. Since her lumpectomy and chemotherapy, claimant has consistently complained of right shoulder pain.
- (9) Claimant has been diagnosed with bipolar disorder, depression, anxiety, chronic pain syndrome, right breast mastalgia and lymphedema.
- (10) Claimant takes medications for these symptoms, including Vicodin, Prevacid, Lyrica, Kadian, Lidoderm, Ibuprofen, Seroquel, and Neurontin.
- (11) A form DHS-49, Medical Examination Report, was completed by claimant's surgeon on [REDACTED]. Claimant only retains the capacity to lift less than 10 lbs frequently.
- (12) In a letter dated [REDACTED], another surgeon/breast specialist opined that claimant has a lifetime lifting restriction of no more than 20 lbs.
- (13) A form DHS-49, Medical Examination Report, was completed by claimant's treating source on [REDACTED].
- (14) Claimant only retains the capacity to lift less than 10 lbs occasionally and should never lift anything weighing 10 lbs or more. Claimant retains the capacity to stand and/or walk less than 2 hours in an 8-hour workday, and sit less than 6 hours. Claimant only retains the capacity to conduct hand manipulation and operate foot/leg control on her left side.

- (15) On [REDACTED], claimant underwent a MRI of her right shoulder. MRI showed bone marrow edema with questionable fracture line in the lateral clavicle, and acromioclavicular joint effusion with spur formation.
- (16) On June 5, 2008, the Medical Review Team denied SDA.
- (17) On June 18, 2008, claimant filed for hearing.
- (18) On July 23, 2008, the State Hearing Review Team denied SDA.
- (19) On December 1, 2008, a hearing was held before the Administrative Law Judge.
- (20) After admission of new evidence, claimant's claim was returned to the State Hearing Review Team for redetermination.
- (21) On March 25, 2010, the State Hearing Review Team denied SDA.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of a chronic pain syndrome, lymphedema, and right breast mastalgia that have rendered her unable to use her right hand/arm for manipulation, according to the great weight of the evidence by claimant’s treating sources. The Administrative Law Judge finds that this is a significant impairment to claimant’s performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant’s impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of “not

disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant’s medical records do contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings under Section 1.00 (Musculoskeletal). A listings disability finding for major dysfunction of a joint requires, among other things, gross anatomical deformity, chronic joint pain, and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s). None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

The undersigned has also considered listings under Section 12.00 (Mental Disorders). A listings disability finding for affective disorder requires, among other things, symptoms that result in at least two of the following: marked restriction of activities of daily living; marked difficulties in maintaining social functioning; marked difficulty in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended duration. At most, the medical evidence shows that claimant has been diagnosed with bipolar disorder and was prescribed medication for it. The medical evidence failed to show that claimant’s mental impairment markedly limited her ability to engage in activities of daily living, engage in social function, and maintaining concentration, persistence, or pace.

After the claimant’s hearing before the undersigned, claimant’s record was extended for 14 days so that claimant may obtain and supply additional evidence concerning her mental health. However, claimant failed to supply additional evidence and did not request another extension. Therefore, the undersigned must evaluate claimant’s mental health under the

information provided thus far, and find that claimant does not meet the listing for affective disorder.

Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional

limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, it is undisputed that claimant has lifting restrictions. Claimant's primary care physician completed a DHS-49 on [REDACTED]. Claimant's treating source reported on this form that claimant only retains the capacity to lift less than 10 lbs occasionally and should never lift 10 lbs or more. Claimant retains the ability to sit and/or stand less than 2 hours in an 8-hour workday and sit less than 6 hours. Claimant only retains the capacity to use left extremities, and unable to use his right hand/arm for manipulation. Similarly, in a letter dated [REDACTED], claimant's surgeon/breast specialist opined that claimant has a lifetime lifting restriction of no more than 20 lbs because of her lymphedema.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007). In the current case, no medical evidence supports the treating source's opinion that claimant only retains the capacity to walk and/or stand less than 2 hours in an 8-hour workday. All of claimant's ailments are associated with her breast cancer and subsequent lumpectomy, both of which affect her upper extremities, not her lower extremities. Since the

treating source's opinion, concerning claimant's use of her lower extremities, is questionable, the undersigned cannot take that opinion into consideration. The Administrative Law Judge therefore concludes that claimant only has functional limitations resulting from her symptoms that affect her abilities to lift and carry.

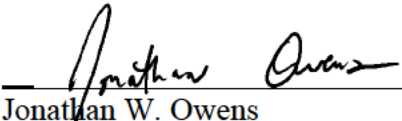
Claimant's PRW includes working as a cashier and a pet groomer. These jobs, as typically performed, involve the use of both hands/arms. A position as a pet groomer may require light to heavy lifting, such as lifting a large animal. However, a position as a cashier does not require medium to heavy lifting. Since the medical evidence provides no support for a walking and/or standing limitation and claimant has a 20 lbs lifetime lifting restriction, the Administrative Law Judge concludes that claimant does retain the capacity to perform her past relevant work as a cashier.

With regard to step 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 4.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant does not meet the federal standards for SSI disability, as addressed above, the undersigned concludes that the claimant is not disabled for the purposes of the SDA program.

DECISION AND ORDER

Accordingly, the Department's decision denying SDA is hereby AFFIRMED.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/14/10

Date Mailed: 07/14/10

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 mailing 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.

JWO/dj

cc:

