

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.: 2008-26737
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 3, 2008
Macomb County DHS (36)

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 and her sister, [REDACTED] appeared at a hearing held on November 3, 2008 at the Department of Human Service (Department) in Macomb County.

The closing date was waived. Additional medical records were reviewed by the State Hearing Review Team (SHRT) and they denied the application. 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) program 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) On January 30, 2008 the Claimant applied for MA-P and SDA.
- (2) On March 19, 2008 the Department denied the application; and on January 12, 2009 SHRT denied the application finding the medical records did not establish duration per 20 CFR 416.909.
- (3) On May 9, 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-eight years of age.
- (5) Claimant completed grade 9; and can read and write English and perform basic math.
- (6) Claimant last worked in September 2007 fifteen years as a nanny when she passed out on duty, from bleeding/nausea.
- (7) Claimant has alleged a medical history of loss of stamina, weak legs, chronic fatigue, nausea, episodes of unexpected nose bleeds, episodes of unexpected vomiting, decreased memory and a blood clotting abnormality.
- (8) 2007, in part:

June: DISCHARGE DIAGNOSES: Cellulitis left lower extremity. Hypertension, Diabetes, Depression, CHF, Hepatitis C, Coronary Artery Disease, Osteoarthritis, Hyperlipidemia, Pancytopenia.

HOSPITALIZATION: Admitted for left foot cellulites non-responsive to out patient treatment. Anti-biotic given for staph aureua of foot. Chronic medical conditions of diabetes with sliding scale insulin. Has pancytopenic probably secondary to liver disease and hepatitis C with known elevated liver function studies and seen by hematology who has arranged for bone biopsy and noted to have enlarged spleen. To follow with [REDACTED] and with [REDACTED] Discharged on medications insulin, and home medications Zoloft, lisinopril, glimpirides,

Lasic, propoxyphene, atenol, tramadol, aspirin. [REDACTED]
Department Exhibit (DE) 1, pp. 91-103, and pp. 1-90 reviewed..

(9) January 2008, in part:

Treated on our office for chronic hepatitis C with cirrhosis and severe fatigue. Hepatitis C has worsened to where all signs of liver disease, jaundice and portal hypertension are present. Blood work shows WBC is 2.9, Bone marrow is suppressed, Platelets are low at 101, Hbc is 5.6, liver enzymes are elevated and INR is up at times. Kidney functions still maintained at good level. Blood sugars fluctuate but under control. [REDACTED] DE 1, p. 1.

(10) November 2008, in part:

Clinical Examination: HISTORY: C/O shortness of breath on exertion. Occasional leg edeam with headaches and dizziness off/on. Has increased urination and aches/ pains in different joints of her body; and easy bruising off/on. Does not use insulin for blood sugar but follows low sugar diet and blood sugar this morning was 87. Feels tired/fatigue off/on for long time. C/O arthritis of joints of low back, hips, knees, and ankles; and has problems with her balance. Medications: Metformin, atenolol, compazine, Darvon, lisinopril and HCZT.

PHYSICAL EXAMINATION: Vital signs: HT 69", WT 272 pounds, BP 163/86 and 156/80, Pulse 125. Vision without glasses 20/40 right, 20/50 left. HEENT, Neck, Heart, Lungs, Abdomen, Nervous system: [All opined to be within normal limits.] Range of motion of cervical spine, lumbar spine, shoulders, elbows, HIPS, KNEES, ANKLES, WRISTS, Hands/Fingers: normal.

IMPRESSION: Hypertension. Congestive heart failure. Diabetes Type II, Diabetic Neuropathy. Hepatitis C. Chronic osteoarthritis of multiple joints. [REDACTED]

Chest X-ray: IMPRESSION: no active pulmonary disease, cardiovascular silhouette within normal limits.

Pulmonary Function Test: Understanding, effort and cooperation was good. FVC - 2.66; FEV1—2.33 before use of bronchodilator.

Complete Blood Count: WBC—low, MO—high, LY--low, RBC--low, MCV – high, MCH—high, RDW—high, Plt—low, MPV—low.

DE N, pp. 1-13.

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 not performing SGA since September 2007. Thus, 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 (6thCir 1985).

In this case, the Claimant has presented medical evidence and testimony that support physical impairments. See finding of facts 8-10. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and the liver condition, abnormal blood morphology and fatigue has continued over 12 months; and is expected to last. See finding of facts 8-9. 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 physical and mental 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. In this matter, the medical records established continuing abnormal blood values where the chronicity continues for three months. See finding of fact 9-10. Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 7.09 *Polycythemia vera (with erythrocytosis, splenomegaly and leucytosis or thrombocytosis)* was relevant. Listing 5.00 *Gastrointestinal System* was reviewed because of the medically documented splenomegaly. Listing 5.05 was reviewed. There were no medical records establishing significant weight loss, ascites, or chronic liver disease by liver biopsy.

Therefore, the undersigned finds the Claimant’s medical records do not establish the criteria, severity and intent of the listings under Appendix 1 of Subpart P of 20 CFR, Part 404.

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 past relevant work was childcare/nanny for 15 years. At hearing the Claimant testified she cannot return to child care due to fatigue and passing out, weak legs, episodic nose bleeding. This testimony and the medical evidence establish that 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 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 totality of 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 because of the testimony at hearing; and the undersigned notes the poor quality of [REDACTED] medical evaluation in November 2008. 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-eight 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; 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.

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 impairments meet the requirements under SSI disability standards, and prevents other sedentary work

activities for ninety days. This Administrative Law Judge finds the Claimant is presently “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 and State Disability Assistance programs.

It is ORDERED; the Department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the January 2008 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 March 2010.

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

Date Signed: March 9, 2009

Date Mailed: March 13, 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/jlg

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