

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

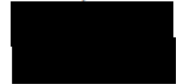


Claimant

Reg. No. 2008-27842

Issue No. 2009; 4031

Case No:



Load No.

Hearing Date:

November 12, 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 November 12, 2008. The Claimant appeared at the Department of Human Services (Department) in Wayne County.

The record was left open to obtain new medical information. New medical records were reviewed by the State Hearing Review Team (SHRT); and the application was denied. This matter is now before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) 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 applied for MA-P and SDA on April 28, 2008.
- (2) On July 24, 2008 the Department denied the application; and on February 10, 2009 the SHRT denied the application based on medical records finding an ability to perform other unskilled, light work.
- (3) On July 31, 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 12 and associates degree in accounting; and can read and write English and perform basic math.
- (6) Claimant last worked in 2006 working for a chiropractor in typing, filing, phone, assisting patients, developing x-rays; and before at [REDACTED] in retail; and before as a cashier and was a dental assistant.
- (7) Claimant has alleged a medical history of MVA in 2006 causing injuries to back, hip, neck with pain, and physical therapy for six months without improvement, hypertension with medication, and since 1992 unstable angina pain using nitroglycerin.

(8) March 2007, in part:

Returns with continued C/O neck pain. Denies pain in upper extremities. No treatments since last visit. Physical Exam: tender in posterior cervical spine with pain on flexion and extension of cervical spine. Negative Lhermitte's and Spurling sign. No motor or sensory deficits upper extremities. Negative Hoffman sign. Reflexes are symmetric. X-rays cervical spine demonstrate normal

alignment and small anterior osteophytes at C4-C5 level. I feel symptoms are related to C4-C5 disk herniation. Recommend physical therapy and Lidoderm patches. [REDACTED]
Department Exhibit NE, p. 11

(9) [REDACTED], in part:

March: BP 150/110 and running high. Refill Procardia. [Illegible records]. DE N, pp. 1-4.

April: ECHOCARDIOGRAM IMPRESSION: mild mitral valve prolapse. Rest of cardiac valves normal. Normal left atrial size, left ventricular chamber volume, wall thickness and systolic function with left ventricular ejection fraction 55%. Doppler revealed mild to moderate degree of mitral regurgitation and trace tricuspid regurgitations with pulmonary artery pressure normal. [REDACTED]
[REDACTED] DE N, pp. 7-10.

May: Stress Test: Exercised for 6 minutes on standard Bruce protocol but stopped due to fatigue and shortness of breath. CONCLUSION: Negative ECG portion of stress echocardiogram. No chest pain with exercise. Adequate heart rate response achieved. Adequate level of stress based on double product. Average functional capacity overall. No limitations from a cardiac standpoint. [REDACTED]. DE N, pp. 5-6 and 16-17.

(10) [REDACTED] in part:

Internal Medicine Evaluation: C/O chest pain since 1992; and takes nitroglycerin which subsides pain. States movement of neck is painful but no loss of movement. She can make a fist. Grip is good with both hands. She can use hands/fingers to button, tie/untie shoes. Using both hands can lift less than 10 pounds from floor but not carry any distance. She can walk ½ block at street level, climb one flight of stairs, sit for one hour. Cough or sneeze does not aggravate back pain. Independent in ADLs. No taking any medications or use braces or walking aids.

PHYSICAL EXAMINATION: Vital signs: BP 140/90 with normal fundi, HT 5', WT 139. HEENT, Neck, Chest, CVS, Abdomen, Skin, Extremities, Spine, Bones & Joints, Nervous System: [all within normal limits.] Except spasm over cervical and lumbar spines. Limitation of movement of lumbar spine. Straight leg raising test was 30 degrees both sides with pain complaints of back and right hip. Cannot squat more than 30% due to pain lower back.
[REDACTED] De 1, PP. 6-9.

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 2006. 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 (6th Cir 1985).

The medical evidence has established that Claimant has physical limitations that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted

continuously for over twelve months. See Findings of Facts 8-10. It is necessary to continue the evaluation 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 impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, and the lack of medical records, the undersigned finds that the Claimant's medical record will not support findings that her 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 cervical spine and lumbar spine limitations of motion with pain. Appendix 1 of Subpart P of 20 CFR, Part 404; Listing 1.00, *Musculoskeletal System* evaluates listing level impairments applicable to the Claimant's impairment.

After reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements. The medical records do report that the Claimant has mild limited range of motion. But the physical impairment does not cause a need for walking aids. There were no medical records that the impairment disables her ability to walk. There were no medical records establishing loss of strength in the upper or lower extremities; no muscle wasting or edema was established in the medical records.

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 working basically assistive work in a clinic. The Claimant reported limitations to [REDACTED]. See Finding of Fact 10. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above listing prior occupations. Evaluation under step five will be made according to the law.

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.

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 by impairments to sedentary work.

The Claimant is evaluated under Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines:

20 CFR 416.967(a), *sedentary work*:

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 forty-eight is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21; education: high school graduate or more; previous work experience: skilled or semiskilled—skills not transferable; Claimant is “not disabled” per Rule 201.21.

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 evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents substantial gainful activities for ninety days. This Administrative Law Judge finds the Claimant is presently "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 the State Disability 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: February 25, 2009

Date Mailed: March 9, 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

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