

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: 2008-28954
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 16, 2008
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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, an in-person hearing was held on October 16, 2008. Claimant was represented by [REDACTED]. The record closed on January 9, 2009.

ISSUE

Is claimant disabled for the purposes of the Medical Assistance and State Disability Assistance 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) Claimant applied for Medical Assistance and State Disability Assistance benefits on December 18, 2007. Claimant requested medical assistance retroactive to September 2007.

(2) Claimant's impairments have been medically diagnosed as hypertension, noninsulin dependent diabetes, and mild diabetic peripheral neuropathy, history of epilepsy, hyperlipidemia, and history of depression, cataracts, poliferative diabetic retinopathy and history of endometrial cancer (January 2008 surgery).

(3) Claimant's physical symptoms are constant mild back pain, frequent incisional pain, leg pain, blurred vision, occasional dizziness, and occasional muscle spasms in the arms, diarrhea, constipation, numbness and tingling in the hands and feet and swelling in the legs.

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months. Claimant is 54 years of age.

(5) Claimant has three years of college education

(6) Claimant has employment experience as a typist, clerical worker and a retail salesperson.

(7) Claimant has significant limitations on physical activities involving sitting, standing, walking, and lifting.

(8) The department found that claimant was not disabled and denied claimant's application on March 27, 2008.

(9) New medical evidence (marked new in the file) was received and entered after the hearing. It was submitted to the State Hearing Review Team for reconsideration. The State Hearing Review Team again determined that claimant was not disabled for the programs.

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 400.10,

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).

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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

If an individual has a severe impairment and a decision cannot be made based on current work activities or medical facts alone, the residual functional capacity and the physical and mental demands of the work done in the past will be reviewed. If the individual can still do this kind of work, he or she is not considered disabled. 20 CFR 416.920(e).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Therefore, the determination of disability will be based on claimant's residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

It appears that claimant has the residual functional capacity to perform work on at least a sedentary level. Claimant was diagnosed with hypertension. There is no evidence to show that this presents any limitations. Claimant has also been diagnosed with noninsulin dependent diabetes, along with diabetic peripheral neuropathy and proliferic diabetic neuropathy. In a report dated [REDACTED], the examining physician indicated that upon examination of the cervical, dorsal and lumbar spine, claimant does have some mild scoliosis; however, there was no paraspinal muscle tenderness or spasm. The motion of claimant's lumbar spine as follows: forward flexion 0-70 degrees. Backward extension 0-15 degrees. Lateral flexion 0-15 degrees, lateral rotation 0-15 degrees. Claimant's straight leg raise test was 70 degrees on the right and 70 degrees on the left. Examination of the upper and lower extremities does not reveal obvious fracture, deformity, color, change or striking abnormalities. The joints of the extremities do not appear to be swollen or inflamed. There were no subcutaneous nodules, ulnar deviation, tophi or Heberden nodes noted. The physician noted that the neurological examination was within normal limits except absent bilateral ankle jerks. The physician noted that claimant's blood pressure was well controlled. She did have a mild degree of diabetic peripheral neuropathy. Claimant has also been diagnosed with epilepsy. At the hearing, she testified, however, that her last seizure was seven months ago and that she has them approximately once a year. Claimant's seizures do not meet a listing pursuant to 20 CFR 416.926 for seizures. Claimant has a history of depression; however, there is nothing in the medical evidence to indicate that there are any limitations as a result of this condition. Claimant underwent surgery for endometrial cancer in [REDACTED]. Although claimant complains of frequent incisional pain. There is no evidence to indicate any significant limitations that will be expected to last for 12 months or more. It should be noted that claimant prefers not to take any pain medication which should alleviate some of her

pain symptoms with regards to her back, leg and incision. Most notably, claimant has been diagnosed with vision problems. She has cataracts and proliferative diabetic retinopathy. Her best correction for distance is for her right eye 20/80 and left eye 20/70. There is no evidence of impaired near vision. Claimant's vision limitations do not meet a listing as set forth in Appendix 1 in 20 CFR 416.926. Claimant indicates that she is able to perform such as activities as washing the dishes, cooking, vacuuming, and taking the bus. It appears that claimant has the residual functional capacity to perform work on at least a sedentary level. Since claimant's previous work as a typist and clerical worker was sedentary work, claimant's residual functional capacity allows her to perform past relevant work. 20 CFR 416.920(f). Claimant is therefore not disabled for the purposes of the Medical Assistance and State Disability Assistance programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was correct in determining that claimant was not disabled for the purposes of the Medical Assistance and State Disability Assistance programs and it is

ORDERED that the department's decision in this regard be and is hereby AFFIRMED.

/s/ _____
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 20, 2009

Date Mailed: February 24, 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.

RPC/tg

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