

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: 2008-6478
Issue No. 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 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 telephone hearing was held on February 25, 2008. The Claimant appeared at the Department of Human Services (Department) in Kent County.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records, independent medical exam, pulmonary function test and x-rays. No additional medical records were received. The record closed. 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) 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 June 29, 2007 the Claimant applied for MA-P and SDA.
- (2) On August 24, 2007 the Department denied the application; and on January 31, 2008 the SHRT denied the application based on insufficient medical evidence.
- (3) On October 10, 2007 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-nine years of age.
- (5) Claimant completed grade 10; and can read and write English and can perform basic math skills. Department Exhibit (DE) pp. 31 and 34
- (6) Claimant last worked in 2003 making candy at a factory; and prior was a custodian, personal care provider, a packer, a restaurant cook, child and foster care, and hotel housekeeper.
- (7) Claimant has alleged a medical history of asthma/bronchitis, severe arthritis of right/left knee, carpal tunnel right/left with surgery on the left; hypertension and bipolar/depression /anxiety disorders.

(8) [REDACTED], in part:

Came as new patient in [REDACTED] with history of asthma, bipolar disorder, HTN and recently diagnosed with carpal tunnel syndrome. Requesting refills of her medications but need her records from [REDACTED] before.

[REDACTED] PHYSICAL EXAMINATION: Vital Signs: HT 62-63", WT 177, BP 126/80. Well developed and nourished, alert, nontoxic, oriented times 3, and no acute distress. HEENT, Chest,

Heart, Lower extremities: straight leg raising, Neurological: [All within normal limits.] with negative Romberg. [REDACTED], [REDACTED]. DE 1, pp. 19-20.

[REDACTED] Six weeks post op left carpel tunnel release. Numbness and tingling resolved. C/O aching right knee and leg. Currently using cane at home. Physical Exam: full range motion of fingers left hand. Radial pulse 2+. Sensation intact. Right lower extremity, hip range of motion is non-tender. Denies groin pain. Full range of motion of knee. Walks with bit of antalgic gait. Regarding right lower extremity she was advised we did not find medical significance. Return 2 months; and discuss right carpel tunnel release surgery but to wear splint right wrist.

[REDACTED]: Left carpel tunnel release surgery provided considerable relief. C/O right wrist/forearm pain. Strength was 5/5 with positive Tinel's and Phalen test on right. Needs EMG. [REDACTED]. De 1, pp. 10-15.

X-ray right ankle: IMPRESSION: normal right ankle.
X-ray right knee: IMPRESSION: normal right knee. DE 1, pp. 16-17.

(9) [REDACTED], in part:

[REDACTED]: Office visit: Ext: movement of right knee. I have injected it before and is tender again so will inject right knee again. Lungs: some rhonchi and wheezing. Given nebulizer treatment and it cleared up nicely. Vicodin and Phenergan with codeine refilled.

[REDACTED]: C/O knee pain and was injected before. Albuterol for nebulizer was refilled. But not going to give more pain refills because of her breaking pain contract; and people here in clinic are handling that part.

[REDACTED]. DE 1, p. 21-25.

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 2003. 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 (6thCir 1985).

In this case, the Claimant has presented medical evidence of arthritis affecting the right knee, some breathing problems, carpal tunnel syndrome of right hand and a history of mental impairments. These impairments would impact her abilities to perform basic work activities according; and these types of mental and physical impairments are expected to last. See Finding of Facts 8-9.

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, the undersigned finds that the Claimant’s medical

record will support findings that the impairments are “listed impairment(s)” or equal to a listed impairment 20 CFR 416.920(d). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Based on the medical records available, the undersigned finds the records are insufficient to evaluate under the listings of Appendix 1 of Subpart P of 20 CFR, Part 404. There were no appropriate medical testing results establishing arthritis. Right knee x-ray results were normal as was right ankle x-ray. Clinical physical examination of the hips and right knee in [REDACTED] was normal. See Finding of Fact 8. [REDACTED] did right knee injections in [REDACTED] which provided temporary relief. See Finding of Fact 9.

In this case, this Administrative Law Judge finds the Claimant is not disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records. 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) prevents 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 making candy, custodial work, packer, cook and child/foster care. The Claimant testified at hearing to not being able to perform any past relevant work incidents including child care. The Claimant testified to driving occasionally, being able to take the bus and doing some knitting and crochet hand work. These activities involve use of both

hands and arms; and the lower extremities. There were no medically prescribed physical limitations and medical records opined the Claimant was alert and oriented times three; and taking psychiatric medications for two years. See Finding of Facts 8-9. But the undersigned finds the Claimant cannot return to work based on her testimony. Thus evaluation will proceed under step five.

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. 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 forty-nine is considered a *younger individual*; a category of individuals age 45-49; Rule 201.19; education: limited or less; previous work experience: skilled or semi-skilled—skills not transferable; Claimant is “not disabled” per Rule 201.19.

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 have disabled her under SSI disability standards. 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 program and State Disability Assistance program.

It is ORDERED the Department's decision is AFFIRMED.

/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

cc:

