

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. 2008-8736

Issue No. 2009, 4031

Case No:

[REDACTED]

Load No.

Hearing Date:

March 27, 2008

Montcalm 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 March 27, 2008 [REDACTED] at the Department of Human Services (Department) in Montcalm County.

The record was left open to obtain new medical information. The undersigned issued an Interim Order. Medical records were received and reviewed by the State Hearing Review Team (SHRT); and the benefits were granted effective August 2008. Time periods May 2007 through July 2008 will be decided as this time period is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (MA) program and State Disability Assistance (SDA) program for time period May 2007 through July 2008?

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's eligibility was under re-determination for MA-P and SDA in May 2007.

(2) In November 2007 the Department denied the application; and on December 9, 2008 the SHRT denied the re-determination for May 2007 through July 2008 based on no evidence of cancer reoccurrence and the ability to perform basic work activities.

(3) On November 14, 2007, the Claimant filed a timely hearing request to protest the department's determination.

(4) [REDACTED]

(5) [REDACTED]

(6) Claimant last worked in June 2002 as a cook and dishwasher, and did factory work for 16 years. DE 1, p. 16

(7) Claimant has a medical history of pain in lower back down left leg to knee, neck and arm; right and left ankle injuries, prolapse of rectum, asthma and shortness of breath and depression with history of colon cancer.

(8) 2004, in part:

[REDACTED]

(9) May 2007, in part:

[REDACTED]

[REDACTED]

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 2002. 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).

The medical evidence has established that Claimant has physical and mental 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 Fact 9. 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 degenerative disc changes of the cervical spine and lumbar spine; and left shoulder synovial erosion cysts with limited range of [REDACTED] the Claimant had generalized weakness and difficulty tracking: meaning understanding and answering and responding to questions.

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 lower extremities; or that there were deficits in lower extremity pulses. No muscle wasting or edema was established in the medical records. See DE 1, pages [REDACTED]

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 most recently was working as a cook and dishwasher until 2002. [REDACTED] limitations and findings of mental limitations, the undersigned finds this medical opinion persuasive that the Claimant cannot return to past relevant work. [REDACTED] May 2007 mental limitations were not fully evaluated until November 2008. This is one evaluation used by the SHRT to grant benefits beginning August 2008 along with an August 2008 MRI of the Claimant's cervical spine.

The undersigned opines that the SHRT did not review medical records of the findings of 2004 cervical spine studies. See Finding of Fact 8. The 2004 and 2008 findings revealed the same deficits in the cervical spine, but recently are worse. The undersigned opines that the mental status exam in November 2008 relied on by the SHRT to grant benefits, should be retroactively applied back to May 2007 because mental deterioration and dementia do not arise overnight; and Dr. Winburn noted mental limitations in May 2007. Thus the undersigned finds the Claimant disabled at the fourth step; and unable to perform any substantial gainful activities.

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 disability requirements under SSI disability standards, and prevents substantial gainful 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 program and the State Disability Program.

It is ORDERED; the department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the May 2007 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 December 2010 at which time a current medical exam and a current psychological examination should be included.

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

Date Signed: 12/29/08

Date Mailed: 01/06/09

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

[REDACTED]