

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.: 2008-9993
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 9, 2009
Wayne County DHS (59)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on February 9, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. Suzette Coklow appeared on behalf of the Department. At the Claimant's request, the Record was extended to allow for the submission of additional medical records.

The additional records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 22, 2009, the SHRT found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted a public assistance application seeking MA-P retroactive from June 2007, and SDA benefits on September 25, 2007.
2. On October 18, 2007, the Medical Review Team (“MRT”) found the Claimant not disabled finding her impairments did not prevent employment for 90 days or more for SDA purposes and finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 1, 2)
3. On October 24, 2007, the Department sent an eligibility notice to the Claimant informing her that she was found not disabled. (Exhibit 1, p. 26)
4. On November 26, 2007, the Department received the Claimant’s written request for hearing protesting the department’s determination. (Exhibit 3)
5. On March 14, 2008 and April 22, 2009, the SHRT found the Claimant’s impairment(s) did not meet/equal the intent or severity of a listed impairment finding her capable of performing other work. (Exhibit 2, pp. 1, 2)
6. The Claimant’s alleged physical disabling impairments are due to back pain, diabetes, high blood pressure, kidney stones in remaining kidney, and shortness of breath.
7. The Claimant did not assert any mental disabling impairments.
8. At the time of hearing, the Claimant was 52 years old with a [REDACTED] birth date; was 5’ 5” and weighed approximately 200 pounds.
9. The Claimant is a high school graduate with some college and has a work history as a caregiver and housekeeper.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and

(4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in 2005. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a) (4) (ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988) The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability on the basis of back pain, diabetes, blood pressure, and kidney stones in her remaining kidney, and shortness of breath.

As a preliminary note, the Claimant's right kidney was removed in 1982.

On June 22, 2007, the Claimant was admitted to [REDACTED] with complaints of abdominal pain in the lower left quadrant. A CT scan of the abdomen revealed mild left perinephritic standing with slight thickening of the left perirenal fascia. The Claimant's creatine was elevated at 2.5 listing the Claimant's baseline in 2005 as 1.8. The left kidney was abnormal size with parenchymal atrophy with six stones. An ultrasound of the abdomen documented some biliary sludge and the HIDA scan revealed biliary dyskinesia with an ejection fraction of 8%. An outpatient cholecystectomy was planned. The Claimant was discharged on June 26 with a diagnoses of biliary dyskinesia, urinary tract infection, pyelonephritis and ileus, nephrolithiasis, chronic kidney disease secondary to solitary kidney, and glucose intolerance.

On June 27, 2007, a Medical Examination Report was completed on behalf of the Claimant with the discharge diagnoses listed above noted. The physical limitations were not filled out.

On July 27, 2007, the physician that followed-up with the Claimant post left percutaneous nephrolithotomy, authored a letter to the Claimant's treating physician stating that the Claimant did well postoperatively and that the CAT scan showed some small stones that were not obstructive in nature. The Claimant was prescribed [REDACTED] with [REDACTED] and was requested to follow-up after a kidney, ureters, and bladder evaluation.

On July 31, 2007, the same physician discussed above authored another letter to the Claimant's primary care physician stating that the Claimant continues to have left-side pain. The CAT scan documented at least 6 stones, one which was 1.3 cm. The Claimant was urged to follow up with appointments to get a stent and lithotripsy.

On August 23, 2007, the Claimant underwent a lithotripsy. The Claimant tolerated the procedure well.

On September 17, 2007, the Claimant was admitted to [REDACTED] for a 23-hour observation. The provisional diagnosis was hydronephrosin. On September 18th, CT scan of the abdomen and pelvis revealed multiple stones in the left renal collecting system with the stent present and a hiatal hernia.

On October 12, 2007, the Claimant was treated in the emergency room for back, flank, and neck spasms. She was released approximately 2 ½ hours later.

On August 14, 2008, the Claimant presented to [REDACTED] with complaints of flank pain, incontinence, and hypertension. A CT scan documented small stones in the kidney. The records are incomplete.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities such as carrying, lifting, and squatting. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged disabling physical impairments due to back pain, diabetes, high blood pressure, kidney stones in her remaining kidney, and shortness of breath. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively

means an extreme limitation on the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities.

1.00B2b (1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b (2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.*

The inability to perform fine and gross movements means an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. *Id.* Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level. *Id.* 1.00B2a

As stated, the Claimant asserts impairments due in part to back pain. In order to meet a musculoskeletal listing, the impairment must present a major dysfunction. Ultimately, the Claimant's alleged impairments of back pain does not meet or equal the intent or severity of a

listed musculoskeletal impairment thus she cannot be found disabled under this listing for MA-P purposes.

The Claimant has high blood pressure and is diabetic. Listing 4.00 defines cardiovascular impairment. An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

In the record presented, the Claimant was diagnosed with high blood pressure however, although the Claimant has had complications with her kidneys, the record is devoid of any evidence of any end organ damage (heart, kidney, brain) as a result of the high blood pressure. Ultimately, based upon the hearing record, it is found that the Claimant's medical record does not support a finding that the Claimant's physical impairment of high blood pressure is a "listed impairments" or equivalent to a listed impairment within 4.00. Listings 9.08 and 3.00 were also considered and found inapplicable.

The Claimant asserts physical disabling impairments due to kidney stones in her remaining kidney. Listing 6.00 discusses genitourinary impairments that result from chronic

renal disease. Renal dysfunction due to any chronic renal disease due to any chronic renal disease, such as chronic glomerulonephritis, hypertensive renal vascular disease, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies is evaluated under Listing 6.02. Medical records of treatment, response to treatment, hospitalizations, and laboratory evidence of renal disease that documents the progressive nature of the disease are necessary to meet this listing. 6.00C (1) The type, response, side effects, and duration of therapy is considered as well as any effects of post-therapeutic residuals. 6.00D An impairment of renal function due to any chronic renal disease that has lasted or is expected to last continuously for a period of at least 12 months with chronic hemodialysis or peritoneal dialysis or kidney transplantation meets Listing 6.02. In addition, impairment of renal function is also met when the record documents persistent elevation of serum creatinine with renal osteodystrophy manifested by severe bone pain or persistent motor or sensory neuropathy or persistent fluid overload syndrome with diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg or persistent signs of vascular congestions despite prescribed treatment. Persistent anorexia with weight loss determined by the body mass index of less than 18 calculated at least two evaluations at least 30 days apart within a consecutive 6-month period may also establish an impairment of renal function.

The medical records reflect that the Claimant's remaining kidney has recurring renal stones despite lithotripsy. The Claimant's impairment may meet this listing however the records are insufficient to warrant a finding of disability within 6.00, specifically 6.02.

Ultimately, based upon the hearing record, it is found that the Claimant's medical record does not support a finding that the Claimant's physical impairment(s) are "listed impairments" or equivalent to a listed impairment within 1.00, 3.00, 4.00, 6.00, and 9.08. 20 CFR

416.920(a)(4)(iii) According to the medical evidence alone, the Claimant's physical impairments do not meet or equal the intent or severity of the listing requirements thus she cannot be found to be disabled for purposes of the Medical Assistance program. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b) (1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this

category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant worked as a housekeeper and caregiver whose responsibilities included lifting/carrying material averaging 15 pounds but sometimes more; bathing her disabled son; climbing/descending ladders; walking, standing, bending, and stooping. Given these facts, the Claimant's past work history is classified as unskilled, light/medium work.

The Claimant testified that she can lift/carry approximately 10 pounds; sit and/or stand for ½ hour dependent on the level of pain; can walk approximately ½ block; is able to bend, squat, grip, and grasp without difficulty. The submitted medical record does not specifically address the Claimant's restrictions. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and

disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work as a housekeeper and care provider therefore the fifth-step in the sequential evaluation process is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 52 years old thus considered to be approaching advanced age for MA-P purposes. The Claimant is also a high school graduate with some college. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984) While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978) Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983)

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform light work. The Claimant is a high school graduate who is closely approaching advanced age. After review of the entire record and using the Medical-Vocational

Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 202.13, it is found that the Claimant is not disabled for purposes of the MA-P program.

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. PEM 261, p. 1 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. PEM 261, pp 1 – 2

In this case, the Claimant was found not disabled for purposes of the MA-P program therefore she is found not disabled for SDA purposes.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

The Department’s determination is AFFIRMED.

/s/ _____
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 04/30/09

Date Mailed: 04/30/09

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 the Circuit 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.

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