

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. 2008-13045
Issue No. 2009
Case No: ██████████
Load No. ██████████
Hearing Date:
July 2, 2008
DHS County:
Wayne County/District 19

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 July 2, 2008. The Claimant, her sister, ██████████ and her representative ██████████ appeared at the Department of Human Service (Department) in Wayne County District 19.

The record was left open to obtain additional medical information. Claimant waived the closure date on the record. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. 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) retroactive MA-P for the months of July, August and September 2007 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 October 16, 2007 the Claimant applied for MA-P and SDA.
- (2) On November 6, 2007 the Department denied the application; and on January 12, 2009 the SHRT found medical records did not establish a mental/physical impairment that prevented basic work activities.
- (3) On January 2, 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 11; and can read and write English and can perform basic math skills. Department Exhibit (DE) 1, p. 10.
- (6) Claimant last worked in 2001 in stocking at [REDACTED] and prior experience in retail stores and cashier.
- (7) Claimant has alleged a medical history of Hepatitis C with severe fatigue, lower back pain, kidney insufficiency, chronic nausea, diabetes, hypertension and depression with anxiety.
- (8) July 2007, in part:

Presented to hospital with history of falling due to left sided weakness, complained of headache, neck, back pain with numbness and weakness to left side for one week. She has left sided facile droop and complains of face feeling paralyzed. History of diabetes but has not taken insulin for two weeks. Denies nausea but takes Reglan. CT scan of head was negative. X-rays of cervical and lumbar spine were negative. CPK elevated. Urine drug screen was negative. EKG was normal with sinus tachycardia. MRI findings: no acute findings; mild chronic small-vessel

ischemic changes with mild atrophy. EEG showed seizure origin in right occipital lobe. PHYSICAL EXAMINATION July 23, 2007: Alert, orientated times 3, Visual acuity best corrected 20/40 both eyes. Visual fields showed left homonymous hemianopsia. No edema. No signs of cellulitis. Fundoscopic exam: arterial narrowing and venous engorgement, with cotton wool spots both eyes. Retinal periphery was normal both eyes.

Hypertensive Retinopathy both eyes. Cataracts both eyes. Needs strict blood pressure control. [REDACTED]

Left sided weakness resolved. Neuro: seen/examined; and resting comfortably, visual symptoms have resolved, negative for headache; and negative for neurological deficits, hypertension controlled, all seizures have resolved. Continue Keppra. On discharge was alert, vital signs stable, heart regular rate and rhythm, bowel sounds present, lungs clear. Follow up with [REDACTED]. [REDACTED] DE 1, pp. 11-55.

(9) October 2007, in part:

INDEPENDENT MEDICAL EXAM: History of no seizures since being placed on Keppra in October 2007. She denies weakness but does have blurry vision. Her doctor placed her on Paxil and this is helping her symptoms. Reglan is helping her gastrointestinal symptoms. Diabetic for 15 years with blood sugars of 170-180 with dry mouth and frequency. PHYSICAL EXAMINATION: Alert, awake, orientated X 3, BP 124/78, weight 154, height 62-63", visual acuity without glasses 20/50 right, 20/40 left. HEENT, Lungs, Heart, Abdomen, Extremities, Neurological Examination, Range of motion, Gait, physical functional abilities: [All within normal limits.] except left grip weaker than right. [REDACTED] DE 1, pp. 3-6.

(10) May 2008, in part:

CURRENT DIAGNOSIS: Diabetes, hyperlipidemia, hypertension, seizure disorder, depression, CVA.
Weight 154, BP 115/70.
NORMAL EXAMINATION AREAS: General, HEENT, Respiratory, Cardiovascular, Abdominal.
Musculoskeletal: weakness of. Neuro: Speech fluid, normal, memory fair, Mental: affect flat, eye contact fair.
CLINICAL IMPRESSION: Stable
PHYSICAL LIMITATIONS: Limited. Lifting/carrying up to 10 pounds 1/3 of an 8 hour, never 10 or over; stand and/or walk less than 2 hours in 8 hour day; assistive devices not medically needed for walking; use of right hand/arms for simple grasping, reaching; no use of either feet/legs for

operating foot/leg controls. Findings for limitations: left sided weakness S/P CVA. Uncontrolled DM.

MENTAL LIMITATIONS: limited in comprehension, sustained concentration. Abnormal EEG with seizure disorder. Left sided weakness with dulled responsiveness. Needs assistance at home with ADLs. Medications: Keppra, Paxil, Lipitor, Reglan, Prinnil, Glucophage, Humilin injection. [REDACTED] Claimant Exhibit A, 1-2

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 2001. 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 sufficient medical evidence to support a finding that Claimant has some physical limitations due hypertensive retinopathy; complaining of blurry vision to [REDACTED]. But on his testing, visual acuity was normal and she testified to ability to read and do some arts and crafts. The Claimant’ medical records of physical functional abilities and mental abilities are inconsistent. See finding of facts 8-10. However, the undersigned decides to continue analysis since the nature of her diagnoses confirmed by medical records, are more than minimal; and may impact her abilities to perform basic work since October 2007.

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 not 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 Claimant’s impairments are related to vision defects from hypertension. The Claimant has not had seizures since October 2007. There were no medical records establishing symptoms related to hepatitis C. In recent medical records the Claimant’s blood pressure was normal. [REDACTED] did not find any limitations in range of motion. But the nurse practitioner in May 2008 opined to finding

left sided weakness. [REDACTED] to weakness in left hand grip. But under Appendix 1 of Subpart P of 20 CFR, Part 404 Listing 1.00, *Musculoskeletal System*; the Claimant does not meet this listing because there are no medical records supporting that the Claimant has significant ambulating difficulties/dysfunctions or upper or lower extremity dysfunction. See finding of fact 9. Listing 2.03 and 2.04, Visual Acuity is not met either because the Claimant has normal vision. See finding of fact 8-9.

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. 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 retail type businesses and cashier. At hearing the claimant testified to an inability to return to past relevant work due to back pain and lifting problems. There were no medical records establishing causation for either complaint. The undersigned notes a visual description contemporaneously notes at the time of hearing: "Gait normal, wearing sunglasses, slender with good grooming and dressing stylish."

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 function capacity," defined simply as "what you can still do despite your 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 impairments.

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-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 201.18; education: limited or less—at least able to communicate in English; previous work experience: unskilled or none; Claimant is "not disabled" per Rule 201.18.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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.

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 2, 2009

Date Mailed: March 2, 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

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