

[REDACTED]

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.: 2008-13142

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

July 21, 2008

DHS County:

Macomb County DHS [REDACTED]

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 21, 2008. The Claimant and her mother, [REDACTED] appeared at the Department of Human Service (Department) in Macomb County.

The record was left open to obtain additional medical information. An Interim Order was issued. The Department notes the Claimant did not submit requested medical records: DHS-49, DHS-49d and 49 E. The record closed. The new medical records received from the Department were reviewed by the State Hearing Review Team (SHRT) and the application was denied. The matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined the Claimant was "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 August 6, 2007 the Claimant applied for MA-P and SDA.
- (2) On November 27, 2007 the Department denied the application; and on March 17, 2009 the SHRT denied the application finding the medical records indicated an ability to perform medium work.
- (3) On January 7, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and Claimant is twenty-two years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant was last employed 2005 as a waitress but before was a student.
- (7) Claimant has alleged a medical history of seizure disorder since age 17; and treated with medication; and anxiety/panic attacks with shortness of breath; and depression and isolation.
- (8) [REDACTED], in part:

[REDACTED] CURRENT DIAGNOSIS: Seizure disorder. Right ankle fracture.

NORMAL EXAMINATION AREAS: General, HEENT; Respiratory; Cardiovascular, Abdominal, Neuro.

FINDINGS: Musculoskeletal: right ankle fracture.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last 90 days.

MENTAL LIMITATIONS: None.

FINDINGS FOR LIMITATIONS: Recurrent seizures and black out spells due to seizures. Medications: Trilipal, Klonopin, folic acid, Orthotrilow. [REDACTED] Department Exhibit (DE) 1, pp. 10-11.

[REDACTED]: History of developing grand mal seizures when at home three years ago. CT scan negative. Treated with anti-seizure medications. Now doing OK and only two seizures in six months. But recently was assaulted and received concussion and developed two grand mal seizures when without medication. CT scan reported lesion in right frontal lobe. Sleeps a lot and gets agitated.

PHYSICAL EXAMINATION: Awake, alert, orientated, HT: 65” WT 124 BP 100/66. Visual acuity without glasses 20/15 right,, 20/25 left. HEENT, Neck, CVS, Chest, Abdomen, Skin, Extremities, Spine, Bone & Joint, Nervous System: [All within normal limits.] [REDACTED] DE 1, pp. 3-5.

(9) [REDACTED], in part:

Past medical history of seizure disorder, anxiety and panic attacks presented to ER with C/O seizure. Denies non-compliance with taking anti-convulsant medications: Trileptal and Klonopin. States was seizure free until assault in [REDACTED] with head injury and loss of consciousness. ER attending states had one seizure in ER, while mom states four. No loss of bowel/bladder control, no tongue biting. Had headache a common postictal symptom.

PHYSICAL EXAMINATION: Vital signs, General appearance, HEENT, Neck, lymphadenopathy, Respiratory, Cardiovascular, GI, Abdomen, Musculoskeletal, and Neurological Exam: [All within normal limits.]

Diagnostic findings: Urine drug screen detected cannabinoids, benzodiazepines and opiates. EEG: abnormal and may suggest an underlying irritant process and clinical correlation was advised. CT head was normal. Neurologic Findings: Trileptal level was zero in ER. Smokes cigarettes every day, smokes marijuana every day, drinks alcohol heavily on weekends. Neuro Exam: [Within normal limits.] [REDACTED]

Discharged home stable to F/U with [REDACTED] and medications Klonopin and Trileptal. [REDACTED] DE N, pp.

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).

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 CFR 416.905

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) The Claimant testified that to not performing SGA since 2005. Therefore, the Claimant is not eliminated from MA-P at step one; further review of the claim is necessary.

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 of a seizure disorder that is more than minimal and effects basic work activities. The medical evidence has established that Claimant has limitations that have more than a minimal effect on basic work activities.

Claimant's impairment has lasted continuously for twelve months or more. 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 impairment is 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 Claimant's impairment is a "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. The undersigned's decision was based on Listing 11.00 *Neurological System*.

Listing 11.00 requires recurrent seizure activity during times of therapeutic levels of anti-convulsants. There were no medical records supporting recurrent seizures while on therapeutic anti-convulsant medications. See finding of fact 9. There are no medical records that established mental dysfunction as alleged. The Claimant did not submit the medical records. Medical records indicate the Claimant may have a drug/alcohol abuse problem. See finding of fact 9. Medical records established the Claimant has been non-compliant with taking anti-convulsant medications. 20 CFR 416.930 Need to follow prescribed treatment:

- (a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, if you are a child, if the treatment can reduce your functional limitations so that they are no longer marked and severe.
- (b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

In this case, for the reasons set out above, and because the medical records do not establish the intent and severity of the listings; 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 him 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.

Here, the Claimant's last work was waitress but the Claimant has not worked for nearly four years. The undersigned decides the Claimant cannot return to past relevant work as a waitress.

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 to sedentary work based on the claimant's testimony and medical facts. See finding of facts 8-9 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 twenty-two is considered a *younger individual*; a category of individuals age 18 to 49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.27, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.27.

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 meet the requirements under SSI disability standards, and prevent other sedentary work for ninety days. This Administrative Law Judge finds the Claimant is presently "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 programs.

It is ORDERED; the Department's determination in this matter is AFFIRMED.

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

Date Signed: 03/23/09

Date Mailed: 03/23/09

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

2008-13142/JRE

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.

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