

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.: 2008-17988
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 10, 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, the Claimant, her father [REDACTED] and her friend [REDACTED] appeared at a hearing held on September 10, 2008 at the Department of Human Service (Department) in Kent County.

The closing date was waived. Additional medical records were ordered with an Interim Order. The State Hearing Review Team (SHRT) denied the application. The matter of disability 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) program?

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 December 21, 2007 the Claimant applied for MA-P and SDA.
- (2) On March 14, 2008 the Department denied the application; and on March 26, 2008 the SHRT guided by Vocational Rule 202.13 denied the application finding the medical records supported the ability to perform light work.
- (3) On April 16, 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 fifty-one years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in April 2008 as a [REDACTED] group home for one month; and provided home care to her mother; and prior did factory work in 2004.
- (7) Claimant has alleged a medical history of hepatitis C, renal calculus, shortness of breath, bronchitis and heart palpitations, Non Insulin Dependent Diabetes Mellitus (NIDDM) chest pain, decreased mobility in standing, sitting due to chronic pain, right/left shoulder pain and suicide ideation without attempt.
- (8) [REDACTED], in part:

HISTORY: C/O left sided chest pain, shortness of breath with activity and exertion and fatigue. Some chronic swelling in feet/ankles. To have kidney stone surgery and testing demonstrated anterior ischemia and cardiac cath demonstrated some mild to moderate disease. Medications: Lipitor, Actos, lisinopril, NovoLog insulin, ibuprofen.

PHYSICAL EXAMINATION: HT: 63", WT: 235, BP 128/82. General, HEENT, Neck, Thyroid, Carotid pulses, Lungs, Heart, Abdomen, Musculoskeletal Strength, Gait, Skin, Nail beds, Extremities, Neurological, Speech: [All within normal limits.] Except pedal pulses difficult to feel. EKG normal except for first degree AV block and non-specific ST-T wave changes. Will order dobutamine echocardiogram. [REDACTED]

Dobutamine Stress Echocardiographic Report: IMPRESSION: Negative for ischemia. Significant for mild LVH with normal LV function. Moderate mitral insufficiency. [REDACTED]. Department Exhibit (DE) 1, pp. 69-73.

(9) [REDACTED], in part:

[REDACTED] History: Two weeks chest pain and was seen last night but unwilling to stay at hospital; and left AMA. Appears for same pain. Hypertension, non-insulin diabetes and tobacco use [One pack per day for 20 years] as risk factors. Cardiac Catherization [REDACTED] showed moderate disease up to 50% coronary artery blockage with ejection fraction 55%. States fatigue over last two weeks. Medications Actos, lisinopril, Novolog, lipitor.

PHYSICAL EXAMINATION: Vital signs, General Appearance, HEENT, Cardiac, Pulmonary, Extremities, EKG: [Within normal limits.] EKG unchanged when compared to previous EKG. Given aspirin and nitro and admitted to Telemetry for monitoring. [REDACTED]

Cardiac markers were normal. CBC normal. Kidney blood markers were normal. Blood glucose abnormal-high. Chest X-ray normal. DE 1, pp. 108-148.

[REDACTED] To ER complaining of chest pain. States pain feels like when anxiety acts up. Heart catherization done in past year, in [REDACTED]. Results showed mild to moderate coronary artery disease with 30% eccentric narrowing in distal left main coronary, otherwise normal left ventriculogram and catherization was otherwise unremarkable.

PHYSICAL EXAMINATION: Vital signs, HEENT, Neck, Chest, Abdomen, Extremities, Skin, Psychiatric: [Within normal limits.] EKG did not show acute cardiac event. Cardiac markers-normal. Chest X-ray showed mild cardiac enlargement, no cardiac tamponade. [REDACTED] will arrange outpatient echocardiogram. Pain was felt due to anxiety and given Valium. Stable for discharge. To follow with PCP. DE 1, pp. 92-107.

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 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). In this case, under the first step, Claimant testified to not performing SGA since April 2008, which was an unsuccessful 30 day work attempt. Thus, 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 that support coronary artery disease, hypertension and diabetes for which the Claimant is being treated with medications. See finding of facts 8-9. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities. Although the Claimant testified to a psychiatric hospitalization in [REDACTED], these records were not submitted; and there was no medical evidence of mental impairments that prevent basic work activity. It is necessary to continue to evaluate the Claimant’s impairments 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 or mental 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 physical 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.

The physical impairments established in the medical records were coronary artery disease, hypertension and diabetes. The Claimant testified to chronic pain due to arthritis, which, she testified limits standing, sitting and she uses a cane. However the medical records do not demonstrate with appropriate medical testing the causation for the pain except for right knee osteoarthritis.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. Listing 4.00 *Cardiovascular System* was reviewed for coronary artery disease and hypertension. The Claimant's heart was within normal limits for functioning. See finding of facts 8-9. Listing 9.00 *Endocrine System* was reviewed for diabetes. The Claimant has had high blood sugars but this is under her control with medications and diet; with which she may not be compliant. But there was no medical evidence of acidosis, neuropathy or disturbance of motor function. See finding of facts 8-9. In this matter, the medical records do not establish the intent or severity of the listing level criteria.

In this case, due to the lack of medical records establishing severe impairments; 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.

There were no dysfunctional physical limitations of upper and lower extremity range of motion imitations established in the medical records or the need to use a cane. Both [REDACTED] and [REDACTED] hospital physical examinations were normal; except for high blood sugar, which, as set out above, can be treated with medications and ADA diet, but there was no significant cardiac impairment. See finding of facts 8-9.

The Claimant's past relevant work was [REDACTED] which she tried and was not able to do in April 2008. The Claimant testified she could not return to [REDACTED] work. The undersigned accepts this and decides the Claimant's impairments must be evaluated 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 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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age [55 or more] who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly

limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-one is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.13, for approaching advanced age, age 50-54; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.13.

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 disability requirements 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 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: 04/10/09

Date Mailed: 04/13/09

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/jlg

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