

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.: 2008-18348
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 16, 2008
Kalamazoo 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 July 16, 2008. The Claimant and her counselor from [REDACTED] appeared at the Department of Human Service (Department) in Kalamazoo County.

The record was left open to obtain additional medical information. New medical records were received and reviewed by 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) 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) The Claimant filed an application for MA-P and SDA on December 7, 2007.
- (2) On March 7, 2008 the Department denied the application; and on January 7, 2009 the SHRT denied the application finding the ability to perform past relevant work.
- (3) On April 25, 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-one years of age.
- (5) Claimant completed grade 11 and some training as nursing aid; and can read and write English and perform basic math.
- (6) Claimant last worked in 2006 hospital sitting, home care and home care for a relative.
- (7) Claimant has alleged a medical history of a [REDACTED] blood infection, chronic ear infections, asthma attacks, non-insulin dependent diabetes mellitus (NIDDM), right/left arm pain/weakness and bipolar disorder.
- (8) [REDACTED], in part:

[REDACTED] PSYCHIATRIC EXAMINATION: No history of psychiatric hospitalizations but has been treated with anti-anxiety and anti-depressant medications through family physicians. Denies alcohol and drug use except for daily basis six months after mother died then she quit drinking.

MENTAL STATUS EXAMINATION: Dressed appropriately and hygiene was adequate. Gait, mannerisms and posture were normal. No evidence of loose associations or derailment of thoughts. No delusional voices. Admits to feelings of depression and anxiety which have been relieved by use of Ativan. Denies suicidal/homicidal ideation and intent, denies manic-like states but gets agitated and rage which are out of her control. Cognitive functions such as memory, intellect and orientations are intact.

DIAGNOSES: AXIS I: Bipolar disorder, mixed. [REDACTED].
CE pp. 1-13.

[REDACTED] Two day hospitalization for left lower abdominal pain. Empirically treated with topical metronidazole, blood sugars

monitored and medications resumed. Markedly and rapidly improved with medical treatment. Cyst on CT scan was very small and not likely to cause much pain. Otherwise CT scan abdomen was normal. No other pathology noted in testing. Was upset about taking her off IV pain medication to start oral.

Discharge Physical Examination: General, Vital signs, HEENT, Neck, Chest and Lungs, Heart, Abdomen, Ambulation: [All within normal limits.] White cell count decreased to 13.8, hemoglobin and hematocrit 10.7 and 32.1, stable since admission. Differential count showed 81 segmenters, 16 lymphocytes and 306,000 platelets. Rest of CBC was unremarkable.

She looked comfortable in shower but grimaced when she saw me ; and reports she feels weak although she was able to shower, eating all meals and drinking well. We did extensive studies of abdominal pain and there was no indication for further need to stay in hospital. Discharged with cardiac diet, activity as tolerated, see [REDACTED] in 2 weeks. At her request was given Dilaudid prior to D/C. [REDACTED]. DE, D16-D19.

[REDACTED]: CURRENT DIAGNOSIS: Bipolar disorder, chronic pain, DM II, Asthma, Hyperlipidemia.

HT: 64", WT: 229, BP 130/66

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

FINDINGS: Respiratory: history of asthma but exam normal today. Musculoskeletal: claims lower extremity pain and neuropathy. Mental: Bipolar disorder.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Stand and/or walk less than 2 hours in an 8-hour day; use of both hands/arms for simple grasping, reaching and fine manipulating; No use of either feet/legs for operating foot controls. No assistive devices are needed. Can meet own needs in the home. Limited in sustained concentration. Medications Lamictal, Lexapro, Glypizide, Advair, Amcodex, Lopid, Wellbutrin, Gobopran, Serpquel, Darvocet. [REDACTED]

[REDACTED] Exhibit D, pp. 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 2006. 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 (6th Cir 1985)

In this case, the Claimant has presented medical evidence of physical and mental impairments. The medical evidence has established that Claimant has a physical/mental impairment that has more than a minimal effect on basic work activities.

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 physical and mental impairment 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. The undersigned's decision was based on a review of the necessary severity of criteria to meet Listing 12.00 *Mental Disorders*, Listing 3.00 *Respiratory System*, Listing 7.00 *Hematological Disorders* and 1.00 *Musculoskeletal System*. There were no medical records that established a severe loss of physical or mental function. The Claimant has been under medical treatment and takes prescribed medications. The medical records demonstrated a great amount of medical instructions given to the Claimant to follow, thus to prevent exacerbation of symptoms. To the undersigned, [REDACTED] appeared to question the validity of the Claimant's complaints of pain. See finding of fact 8.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records establishing the intent and severity of the listings. 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/her 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 medical findings were essentially normal for all body systems. The Claimant testified she cannot return to past relevant work as a hospital sitter due to fear of infection. But the undersigned notes the Claimant was hospitalized and there was no apparent resulting infection that occurred while being hospitalized. But the undersigned accepts this testimony and does not return the Claimant to past relevant work.

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. 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-one 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 201.24, for younger individual, age 18 to 49; education: limited or less—at least able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.24.

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 medical evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevents other

work activities for ninety days. 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: 04/20/09

Date Mailed: 04/20/09

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

cc: 