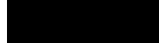


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-18991

Issue No.: 2009

Case No.:

Load No.:

Hearing Date:

September 18, 2008

Ionia 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 September 18, 2008. The Claimant and representative appeared at the Department of Human Service (Department) in Ionia County.

The record was left open to obtain additional medical information. 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) 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) The Claimant filed an application for MA-P on February 14, 2008; and a previous application filed in May 2007 was denied by MRT.
- (2) On April 22, 2008 the Department denied the application; and on February 10, 2009 the SHRT denied the application because medical records indicated a capacity 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 years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2003 doing factory work for 10 years; and has worked as cashier and caring for the elderly.
- (7) Claimant has alleged a medical history of fibromyalgia for 13 years helped with treatment of the medication Cymbalta, Bipolar disorder and taking Lisobid; newly diagnosed chronic obstructive pulmonary disease (COPD) and has degenerative disc disease
- (8) November and December 2007, in part:

November: MRI lumbar spine: CONCLUSION: Severe degenerative disc disease at L5-S1 and associated severe left L5 neuroforaminal narrowing with apparent nerve root involvement. No identified significant neuroforaminal narrowing to account for right sided symptoms. [REDACTED]

December: States she is doing quite well overall and gets too much sleep at night. Reports no depression, no crying spells, no suicidal ideation, no mood swings, no irritability, no aggression, no rage or anger outbursts, no racing thoughts, occasional anxiety attack. Weight stable. Said she is not in particular pain at this time and not on any pain medications. Takes Neurotin for fibromyalgia; and Synthroid for thyroid. Takes Flexoril at night. Reports gets bored and cleans a lot, playing games and watching her kids. Home life is

going well. Denies drugs, alcohol, paranoia, hallucinations. Therapist is helping her. OBJECTIVE: Good spirits, quiet, calm, cooperative, cheerful, polite, mood euthymic, affect bright and cheerful. No evidence of suicidal, homicidal ideation or self harmful behaviors. No aggression notes. No frank psychosis and maintains good eye contact and good historian. [REDACTED] Department Exhibit (DE) A, pp 33-34 and 55-56.

(9) September and October 2008, in part:

September: PSYCHOLOGICAL EVALUATION: Reports a hobby of riding a motorcycle to different locations including bike rallies; and taking care of elderly people in-home care for which she receives payment. Reports of continuous use of marijuana but not alcohol, denies OTC or street drugs.

Denies seizure disorder, blackouts, fugue states but reports memory problems. Denies all neurological history, intrusions into thought processes, voices and messages, denies hallucinations, unusual emotions, depersonalization or thought broadcasting and thought insertion, no mood congruent sensory alterations and organized persecutory senses.

States as many as 15 different jobs lasting two to eight months; and would obtain jobs, do fairly well but couldn't keep up with it and often be fired. In therapy for last five years for depression, and has been taking Abilify and Cymbalta causing a noticeable improvement in depression and anxiety; and taking Neurotin and Lythobid. Lives with father, manages the household activities including cleaning, laundry, food preparation and purchases and preparation. There is no household task she cannot perform but vacuuming and doing floors take longer. Has driver's license and owns her car. Several tests administered. Diagnosis: Axis I: Mood Disorder, NOS, possibly rapid cycle bipolar or unicycle disorder or recurrent depression with acting out. Able to manage own funds. With treatment compliance she should be employable. Possible non-compliance with her current psychotherapy as was vague about treatment goals. [REDACTED]

October: INDEPENDENT MEDICAL EXAMINATION:
States can do ADLs, household chores, able to drive and grocery shop, used to enjoy motorcycling and otherwise does household chores. Can sit 15 minutes, stand 20 minutes, walk one block and lift 10 pounds. Smokes one pack per day for 30 years. PHYSICAL EXMINATION: Appearance/Mental status, Vital Signs, Eyes/Ears, Neck, Chest, Heart, Abdomen, Vascular, Musculoskeletal, Neuro, Range of Motion all joints: [All within normal limits.] Except: appears mildly depressed, tenderness over facet joints at L5-S1 and right sacroiliac joint. R. [REDACTED] DE N, pp. 1-15.

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 2003/2004. But [REDACTED] notes the Claimant was performing personal care for elderly and receiving payment for the service in September 2008. There was no additional information. 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 some physical/mental limitations that have more than a minimal effect on basic work activities; and Claimant's impairments are expected to last.

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 Listing 12.00 *Mental Disorder* and 1.00 *Musculoskeletal Disorders*. There were no medical records establishing severe loss of mental function according to 12.00C. There were no medical records establishing severe loss of ability to physically function according to 1.00Ba. See finding of fact 9.

The Claimant submitted statements of [REDACTED] [Signed in 2007] and [REDACTED] [Same evaluation but signed in 2007 and 2008]. This evidence was not considered credible by the undersigned. Neither of the statements was dated for the date that was the basis for the doctor's mental or physical opinions that the doctors relied on in the statements.

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/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 except mental and musculoskeletal impairments. The Claimant was examined by [REDACTED] who opined that if the Claimant complied with mental treatment/medications, the Claimant should be able to work. [REDACTED] questioned whether the Claimant's was compliant with mental treatment. See finding of fact 9. [REDACTED] did not find anything but mild depression and tenderness of the back and shoulder. Claimant Exhibit pages 16-18 opined by a physical therapist [Signature illegible] in August 2007, was that the Claimant can perform work to the sedentary level. This is persuasive that the Claimant cannot return to past relevant work; and conforms to the Claimants statements to [REDACTED]. See finding of fact 9.

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 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.

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 determination in this matter is AFFIRMED.

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

Date Signed: 05/01/09

Date Mailed: 05/01/09

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:

