

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.: 2008-19315

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

September 17, 2008

Oakland County (4)

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 17, 2008. The Claimant, her housing coordinator and representative, [REDACTED] appeared at the Department of Human Service (Department) in Kent 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 but the SHRT asked for more new medical information. This matter is now before the undersigned for final decision; and the undersigned decides the medical information is sufficient for a decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) program, and retroactive MA-P back to June 2007 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) The Claimant filed an application for MA-P and SDA on September 24, 2007.
- (2) On December 27, 2007 the Department denied the application; and on December 8, 2008 the SHRT guided by Vocational Rule 202.17 denied the application because medical records indicated a capacity to perform light work.
- (3) On March 3, 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-two years of age.
- (5) Claimant completed grade 11; and can read and write English and perform basic math.
- (6) Claimant last worked in June 2007 as cashier at [REDACTED]; and in food service at [REDACTED]
[REDACTED]
- (7) Claimant has alleged a medical history of asthma since childhood, diabetes mellitus for 17 years, hypertension, congestive heart failure, sleep apnea, back pain, acid reflux, neuropathy, COPD, right shoulder tendonitis, retinopathy, decrease in memory and treatment for depression.
- (8) June and August 2007, in part:

June: DISCHARGE SUMMARY AND DIAGNOSIS:
Gastrointestinal bleed secondary to non-ulcer dyspepsia. Anemia.
Cocaine addiction, Diabetes Mellitus type 2, uncontrolled,
Hypertension, accelerated.

To ER for shortness of breath, hyperglycemia and cocaine four days ago, also non-compliance with medications for three weeks. HT: 65", WT: 285, BP 150/103. Found bilateral pneumonia and medical treatment started. Hemoglobin dropped and gastrointestinal endoscopy found non-ulcer dyspepsia but no active

bleeding. Stabilized and tolerated food and medication. Discharged to follow with [REDACTED] for anemia, gastrointestinal bleed, diabetes and hypertension. Chest X-ray showed improvement but not complete resolution but clinically oxygenation was improved and lung consolidation disappeared. Chest X-ray showed cardiomegaly. [REDACTED] Department Exhibit, (DE) 1, pp. 37-89.

August: to ER with acute exacerbation of congestive heart failure (CHF) with retention of fluid. Crack use on/off for three years and last use 3 weeks ago. Felt better after medical treatment and oxygen; had minimal orthopnea, was able to ambulate well and oxygen saturations were 98% on room air. 2D echocardiogram showed ejection fraction of 55-60%.

Discharged five days later after medical treatment. COPD exacerbation—resolved, CHF exacerbation—resolved, DM—uncontrolled increase insulin, Hypertension currently controlled, Asthma, GERD, OSA—COPD, Depression, HX substance abuse. Follow with PCP one week. Improve compliance with mask at night for OSA. Medications prescribed. [REDACTED]. DE 1, pp. 90-109.

(9) June, July, September and October 2008, in part:

June: Office consultation: Seen today and still has edema of lower extremities; and she has been compliant with her medications. Respiratory status is table. Dyspnea and exert ional dyspnea have improved. Has nocturnal awakenings. Oxygen saturation on room air. IMPRESSIONS: Moderate to severe persistent asthma. Obstructive sleep apnea syndrome. Pulmonary hypertension with cor pulmonale. To continue current respiratory program with Advair and Albuterol and Singular for her severe asthma. Advair is standard of care for this degree of severity of asthma. [REDACTED]

[REDACTED] FACOI. Pages 72-73.

July: Pulmonary Function Test results: Pre measure: FVC--1.51; FEV1--1.19. Post measure: FVC—1.74; FEV1—1.18. Height 65", Weight 342. Severe obstructive ventilatory defect. Severe reduction in ventilatory capacity. Pulmonary & Critical Care.

October: X-ray Chest: Unchanged since November 2007. Heart slightly enlarged. No active disease. Suggestion of mild osteoporosis and degenerative changes in dorsal spine. [REDACTED]

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. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not working since June 2007. 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 sufficient medical evidence to support a finding of physical/mental limitations that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted and are expected to last her lifetime.

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 3.00 *Respiratory System*. Pulmonary function test results did meet the Listing criteria of 3.02B *Chronic Pulmonary Insufficiency* with results of FEV1 below the standard of the listing FEV1 1.25. See finding of fact 9.

This Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program.

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 sufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevent past work and other work activities for ninety days. This Administrative Law Judge finds the Claimant is "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 "disabled" for purposes of the Medical Assistance program and State Disability Assistance program.

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

Accordingly, The Department is ORDERED to initiate a review of the September 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and representative of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in April 2010.

The Medical Social Work consultant in conjunction with the Medical Review Team is to consider the appropriateness of ORDERING the Claimant into mandatory mental health treatment and substance abuse counseling.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

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

Date Signed: 4/29/09

Date Mailed: 4/29/09

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:

