

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. 2008-19982

Issue No. 2009; 4031

Case No:

Load No. ██████████

Hearing Date:

September 29, 2008

Isabella 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 29, 2008. The Claimant and her friend ██████████ appeared at the Department of Human Services (Department) in Isabella County.

The record was left open to obtain new medical information. New medical records were 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) , retroactive 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) The Claimant applied for MA-P and SDA on January 17, 2008.
- (2) On March 31, 2008 the Department denied the application; and on December 9, 2008 the SHRT guided by Vocational Rule 203.28 denied the application based on medical records finding an ability to perform other unskilled, simple work not requiring visual acuity.
- (3) On May 7, 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-six years of age.
- (5) Claimant completed high school in [REDACTED]; residing in the [REDACTED] since [REDACTED]; and can understand spoken English and not perform basic math.
- (6) Claimant last worked in [REDACTED] as a cocktail waitress at the casino for ten years; and previously in hotel housekeeping.
- (7) Claimant has a medical history of Grave's Disease causing right/left eye neuropathy with surgery in [REDACTED], congestive heart failure (CHF), weak muscles and memory loss.
- (8) [REDACTED], in part:
Department Exhibit (DE) 1, pp. 159.
- (9) [REDACTED], in part:
[REDACTED]: Echocardiogram: demonstrates panvalvular regurgitation, mild aortic insufficiency with moderate mitral, tricuspid and pulmonic insufficiency. Compared to study three years ago there

are new abnormalities. [REDACTED]. Department Exhibit (DE) 1, pp. 160.

[REDACTED]: Severe Grave's disease and markedly restricted ocular motility, diplopia and compressive optic neuropathy. Bilateral transantral orbital decompression was performed. Two hours after surgery her vision was satisfactory. She will be discharged in the morning. [REDACTED]. DE 1, pp. 67-68.

[REDACTED]: Follow up post operative. Visual acuity was 20/20-1 right and 20/20-2 left with eyelid restriction. Needs muscle surgery in future. Will refer for follow up. She is moving to California but did not know when. [REDACTED]. DE 1, p. 70

(10) [REDACTED], in part:

[REDACTED]: HISTORY: Found on floor says has generalized abdominal pain due to hyperthyroidism. Has not taken Tapazole for several weeks. CT abdomen and pelvis for right flank pain: IMPRESSION: 3mm non-obstructing left renal stone, Right ovarian cyst. [REDACTED]. DE 1, pp. 130-159.

[REDACTED]: Returns after two years of absence. Has not had medical treatment for one year. Has not taken thyroid medication for two months but recently restarted. Has weakened eye muscles and can't focus, surgery was not completed. C/O fatigue and headaches. PHYSICAL EXAMINATION: Alert, cooperative, orientated times three. Appears anxious. Vital signs, Neck, Throat, Nasal exam, Scalp, Pupils, TM, Chest, CVS, Abdomen, Extremities: [all within normal limits.] Except: eyes extraocular weakness, eye movement minimal, all muscles affected. Continue thyroid medication and needs to follow up with Ann Arbor for eye muscle surgery. [REDACTED]. DE 1, p. 241.

(10) [REDACTED], in part:

[REDACTED]: Appearance/Mental Status: Alert, cooperative, follows commands and well orientated. Affect, dress and effort all appropriate. Ability to communicate and understand questions impaired the examination. Immediate, recent, remote memory was intact with normal concentration. Visual Acuity right eye was 20/50, unable with left eye. Physical examination unremarkable except eyes. Conclusion: Left sided thyroid nodule. All signs of toxicity have disappeared with treatment except eyes. [REDACTED], DE 1, pp. 287-289.

██████: Echocardiogram: IMPRESSION: Preserved left ventricular systolic function. Mild right atrial and right ventricle enlargement, Mild tricuspid insufficiency. ██████. DE N, pp. 3-6.

██████: ABNORMAL FINDINGS: Eyes: Severe thyroid eye disease and has visual field defects. The visual field shows some areas in reliability but there is significant constriction in both eyes. Left eye she was only able to respond to a few stimuli. ██████. DE N, pp. 13-16

██████: Blood test results: Free T4—1.3 in range of 0.9-1/7; TSH—2.42 in a range of 0.27-4.20.

██████: Thyroid Ultrasound: IMPRESSION: Diffusely enlarged and slightly hyperactive thyroid without evidence of mass.

██████: Pelvic Ultrasound: Impression study within normal limits except uterus retroverted. DE N, pp. 7-12.

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, the Claimant testified to not performing SGA since [REDACTED]. 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).

The medical evidence has established that Claimant has a physical limitation that has more than a minimal effect on basic work activities; and Claimant’s eye impairment has lasted continuously for over twelve months. See Findings of Facts 8-10. There was much medical evidence that the Claimant was noncompliant with taking thyroid medication in [REDACTED]. To what extent the Claimant’s noncompliance caused visual deterioration after the [REDACTED] surgery was not medically opined by doctors. Medical records noted better visual acuity established in [REDACTED] with just muscle weakness to be treated. See Finding of Fact 8. The undersigned makes note of 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 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.

It is necessary to continue the evaluation 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 impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the

hearing record, and the lack of medical records, the undersigned finds that the Claimant's medical record will not support findings that her 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.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, the medical records establish visual deficits. The Claimant is not able to see with the left eye. There were cardiac defects but heart function was normal in the medical records. There were no medical records establishing musculoskeletal impairments or weak muscles. See Finding of Facts 9-10. By blood testing done in [REDACTED] [REDACTED] thyroid function was normal and in March 2008 [REDACTED] opined toxicity due to thyroid hyperactivity had resolved with treatment.

Medical records indicate the Claimant does not meet the intent and severity of Listing 2.02 *Loss of Visual Acuity*. Remaining vision in the better eye after best correction is 20/200 or less. The Claimant's remaining vision in the better eye was 20/60+2 right eye.

In this case, 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.

Claimant's past relevant work most recently was cocktail waitress for ten years as of [REDACTED]. See DE 1, page 278. This time was after her surgery in [REDACTED]; and in [REDACTED], the [REDACTED] doctors found her vision near normal and that she said was going to [REDACTED]. See Finding of Fact 8.

But given the visual acuity deficits, the undersigned finds she cannot return to past relevant work as a cocktail waitress. However, there were no other physical impairments. There were two different opinions of the Claimant's claim of memory loss. [REDACTED] found her memory intact with concentration. See Finding of Fact 10. [REDACTED] found memory impairments and diagnosed Axis I: Adjustment Disorder. See DE N, pages 1-2. The Claimant's other known work was hotel housekeeping for which the undersigned finds the Claimant could return because it is simple, unskilled and does not require visual acuity. Thus the undersigned finds the Claimant "not disabled" at the fourth 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 disability requirements under SSI disability standards, and prevents past relevant 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 program and the State Disability 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: February 11, 2009

Date Mailed: February 17, 2009

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.

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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

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