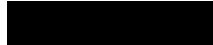


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-21305

Issue No.: 2009, 4031

Case No.:

Load No.

Hearing Date:

August 21, 2008

St. Clair 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 August 21, 2008. The Claimant appeared at the Department of Human Service (Department) in St. Clair County.

The record was left open to obtain additional medical information. Claimant waived the closure date on the record. 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) 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) On February 26, 2008 the Claimant applied for MA-P and SDA; and a previous application dated May 22, 2006 was denied.
- (2) On April 29, 2008 the Department denied the application; and on November 20, 2008 the SHRT denied the application finding the medical records established the ability to perform unskilled medium work limited from heavy lifting by the back impairment.
- (3) On May 2, 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-five years of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and can perform basic math skills.
- (6) Claimant last worked in 2006 as a hospital CNA; and prior was a factory worker for 16 years.
- (7) Claimant has alleged a medical history of fatigue, decreased concentration, depression with stress; and back problems since 2005 due to heavy lifting on the job.
- (8) January and February 2008, in part:

January: To ER with C/O depression, sadness, decreased appetite, vague suicidal thoughts; and has been treated for depression as outpatient. Physical examination: normal for HEENT, orientation, Cranial Nerves, Neck/Back, Respiratory, CVS, Abdomen, Skin, Extremities. Exceptions: Mild/moderate distress, depressed affect, tearful. Urine drug screen: cocaine, detected. Clinical Impression: Depression; and discharged to home, improved. [REDACTED] Department Exhibit (DE) N, pp. 9-17.

February/March: Progress Note: Decreased range of motion LS, positive for Left SLR. Prescribed Lyrica, Ultram, Soma; and ortho referral recommended. Back pain with radiation to left leg. History of HNP L4-5, L5/S1. Needs MRI. [REDACTED] DE N, p. 20

March: Lumbar spine MRI: IMPRESSION: Bulging disc protrusion L4/L5 resulting in moderate bilateral foraminal narrowing, left greater than right with moderate central canal narrowing. Central and left posterior disc protrusion at L5/S1 with partial effacement of left lateral recess of S1 with moderate bilateral foraminal narrowing and mild to moderate canal narrowing. Small central disc protrusion at L3/L4 with mild central canal narrowing. Remaining intravertebral discs show no disc protrusion or additional compromise to central spinal cord; likely degenerative changes. [REDACTED] DE 1, p. 55

March: Independent Medical Exam: PHYSICAL EXAM: Heart and lungs, Abdomen, both normal. Musculoskeletal: Moves antalgically. Able to stand on tiptoes and can stand on right heel but left heel is 25%. Absent lower reflexes. Sensation depressed left ankle as compared to right. IMPRESSION: L/S disc disease with protrusions at L3, L4 and L5. [REDACTED] DE N, pp. 1, 1A.

(9) July 2008, in part:

MENTAL STATUS REPORT: C/O back pain every day. In outpatient mental treatment and states has made a lot of progress. Current medications Buprion, Trazadone, Motrin, Flexeril, Ultram; and two others names unremembered. Admits to use of crack up to one year ago. [REDACTED] Denied alcohol or other drugs but arrested for delivery/manufacture with 79 days of incarceration and probation. States two naps a day and eats a lot. States walking 15 minutes every day. Cares for two dogs and drives son back/forth to work, cooks dinner every night; and reads a lot. Independent in ADLs and attends NA meetings. OBSERVATIONS: wearing wedge type sandals, gait normal, posture erect. Good grooming and hygiene. No problem crossing/uncrossing her legs. C/O back problems but did not display constriction of movement throughout evaluation.

MENTAL STATUS: Alert, orientated times 3, polite, cooperative, spontaneous, well organized and detailed in presentation. Denies present suicidal ideation; and hallucinations/delusions and special posers. Euthymic and matter of fact. DIAGNOSES: Axis I: Cocaine dependence in sustained full remission; Depressive disorder. GAF 61 with some difficulty in social and occupational functioning. [REDACTED] DE N, pp. 2-5.

(10) August 2008, in part:

PHYSICAL EXAMINATION: Appearance/Mental Status, Vital signs, Skin, Neck, Chest, Heart, Abdomen, Vascular, Musculoskeletal, Neuro: [All within normal limits.] Except: mild limitation in range of motion dorsolumbar flexion. CONCLUSIONS: degenerative disc disease lower back. C/O pain with straight leg raising and range of motion diminished in

DE N, pp. 6-8

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 (6thCir 1985).

In this case, the Claimant has presented medical evidence of physical/mental impairments would impact her abilities to perform basic work activities more than minimally. See finding of facts 8-10.

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, the undersigned finds that the Claimant's medical record will not support findings that the impairments are "listed impairment(s)" or equal to a listed impairment 20 CFR 416.920(d). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix 1 of Subpart P of 20 CFR, Part 404 Listing 1.00, *Musculoskeletal System* and 12.04 *Affective Disorder* were reviewed for the criteria required to meet the listing; and the undersigned finds the Claimant did not establish loss of function required at 1.00Ba with the medical records submitted. The medical records did not establish the intent or severity of Listing 12.04.

In this case, this Administrative Law Judge finds the Claimant is not 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) prevents 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 was patient care as a certified nurses assistant with prior factory type work. Appropriate medical testing established a basis for back pain. SHRT provides cautions the avoidance of heavy lifting and other activity avoidance. The undersigned agrees. The undersigned decides the Claimant cannot return to past relevant work. Thus evaluation will proceed 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 by impairments to sedentary work. The Claimant provided the status of her present physical functioning to [REDACTED] and according to that fact, sedentary type work is appropriate. See finding of fact 10. 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-five is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21; education: high school graduate or more; previous work experience: skilled or semiskilled—skills not transferable; Claimant is “not disabled” per Rule 201.21.

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 evidence to support a finding that Claimant's impairments meet the requirements under SSI disability standards, and prevent other sedentary work for ninety days. This Administrative Law Judge finds the Claimant is presently "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 State Disability Assistance programs.

It is ORDERED the Department's decision is AFFIRMED.

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

Date Signed: March 9, 2009

Date Mailed: March 13, 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.

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:



