

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.: 2008-21899
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 15, 2008
Luce 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 October 15, 2008. The Claimant, her sister-in-law [REDACTED] and her brother [REDACTED] appeared at the Department of Human Service (Department) in Luce 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 applications were 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 March 24, 2008.

- (2) On May 23, 2008 the Department denied the application; and on February 9, 2009 the SHRT denied the application finding a non-severe impairment per 20 CFR 416.820(C).
- (3) On May 30, 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 twenty-three years of age.
- (5) Claimant completed grade 12; job corp, business tech with typing and PC operation; and can read and write English and perform basic math.
- (6) Claimant last worked in 2007 as a part-time cook in a local restaurant, part-time waitress and fulltime as a cashier.
- (7) Claimant has alleged a medical history of vaginal bleeding, low grade fevers, cervix infections. Abdominal pain, right side pain with a history of polycystic ovary disease and denies mental impairments.
- (8) [REDACTED], in part:

HISTORY: Abdominal pain, nausea and intermittent fever since hysterectomy in [REDACTED].

CURRENT DIAGNOSIS: Chronic abdominal pain of uncertain origin.

HT: 67", WT: 194, BP 124/76

NORMAL EXAMINATION AREAS: General; Respiratory; Cardiovascular.

FINDINGS: Abdominal: tenderness throughout.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No limitations. Medications: Vicodin prn. [REDACTED]. Department Exhibit (DE) 1. Pp.25-26

██████████: CT abdomen/pelvis: IMPRESSION: No evidence of hernia, mass, inflammatory changes or abscesses to explain abdominal pain. Post hysterectomy, appendectomy oophectomy. Normal: lungs, cardiac images, liver, spleen, pancreas, adrenal glands, kidneys, gallbladder, lymph nodes, small and large bowel loops, urinary bladder. ██████████. DE N, p. 4

(9) ██████████, in part:

Well known to this office presents C/O abdominal pain, nausea and vomiting and no fatty food intolerance. Outstanding surgical history of 6-6 surgeries. Upper abdominal ultrasound showed questionable abnormality in neck of gallbladder. On exam had tenderness of right upper quadrant. Cervix appears normal and there were no adnexal masses. To R/O peptic ulcer disease. EGD and pelvic ultrasound to be scheduled. ██████████. DE N, pp. 42-44.

Hepatobiliary Scan: FINDINGS: 20 minute ejection fraction 10% and abnormally low, normal is 35%. ██████████. DE N, pp. 48-51

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 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 (6thCir 1985)

In this case, the Claimant has presented medical evidence of several abdominal surgeries for pain with an uncertain etiology. The Claimant complains of abdominal pain. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant’s medical records do not document mental impairments that effect 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 Listing 5.00 *Digestive System*. There was no medical evidence of intestinal obstruction; and there was no malnutrition or weight loss due to the Claimant’s GI systems. Etiology of the abdominal pain

was uncertain; and several abdominal surgeries have been performed over several years. See finding of facts 8-9

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 Listing 5.00. 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 GI system and pain. The Claimant testified she cannot return to past relevant work as a cook, waitress due to a decrease in standing time limits, moving and bending and lifting. 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 twenty-three 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; 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.

