

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. 2008-22943
Issue No. 2009
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
September 17, 2008
Oakland 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 17, 2008. The Claimant and her representative [REDACTED] appeared at the Department of Human Services (Department) in Oakland County District 4.

The record was left open to obtain new medical information after the 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.

The undersigned reviewed Claimant Exhibits A, 1-30; B, 1-28; B, 12-26; and C, 1-15. The medical records were disordered in dates, missing numbers, duplicates and copies of medical records reviewed by the SHRT. Claimant Exhibit C, 11-14 and DE N, pp. 1-3 was not used. The opinion did not establish proper medical credentials.

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 for the month of September 2007 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 October 16, 2007.
- (2) On February 22, 2008 the Department denied the application; and on January 2, 2009 the SHRT decided the application lacked duration per 20 CFR 416.435.
- (3) On May 20, 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-seven years of age.
- (5) Claimant completed grade 12; and can read English as evidenced by her signature on authorization to represent and can do basic math.
- (6) Claimant last worked in [REDACTED] for [REDACTED]; and in [REDACTED] lower level manager for [REDACTED]; and before [REDACTED] a housewife.
- (7) Claimant has a medical history of [REDACTED] stroke, hypertension, diabetes, headache, right sided upper/lower extremity numbness, on/off pain in body, fatigue.
- (8) [REDACTED], in part:
[REDACTED]: C/O right sided weakness and expressive aphasia. Not on any medications at home. History of chronic smoking and excessive caffeine use. History of multiple medical problems. PHYSICAL EXAMINATION: Vital signs, HEENT, Neck, Lungs,

Heart, Abdomen, Extremities, Cranial Nerves: [Within normal limits.] Motor Exam: Questionable weakness right side but sensory difficult to assess per her condition. CT scan negative for acute process. EKG normal. Chest x-ray lungs clear but decreased respiratory effort. Heart size borderline. Based on neurological exam appears to be small vessel disease leading to subcortical lacunar infarct due to chronic smoking. Placed on dysphasia and fall precautions. [REDACTED]

[REDACTED]: C/O difficulty breathing started 5 days ago. Had similar symptoms previously with C/O throat swelling. Has sore throat associated with swallowing difficulty. Physical Exam: [Within normal limits.] Except obesity. Normal range of motion of extremities. Orientated x3. CT neck: IMPRESSION: Enlarged thyroid gland causing moderate narrowing of trachea. Chest x-ray: normal for heart, lungs, pulmonary vessels, pleural spaces and bony thoracic structures. Discharged home to follow up with PCP who agrees with discharge. Condition stable. [REDACTED]. Department Exhibit (DE) pp. 25 -64

[REDACTED] C/O chest pain one week, headache and decreased appetitive. History of diabetes and hypertension. Chest pain is intermittent, non-exertional and not shortness of breath, no nausea, vomiting or sweating. Headaches. Denies new numbness, tingling or weakness in arms or legs. Denies vision changes or changes in level of alertness. PHYSICAL EXAMINATION: Vital signs, Constitutional/Psychiatric, Eyes, Ears, Nose, Mouth and Throat, Neck, Cardiovascular, Respiratory, Gastrointestinal, Musculoskeletal, Neurological, Speech: [All within normal limits.] Except 4+/5 muscle strength in right upper and lower extremities. Chest x-ray normal. CT head no acute bleed or acute intracranial process with old infarct. Cardiac enzymes normal. Neuro is normal with slight residual right sided weakness, unchanged from previous. Discharged to home to follow with PCP. [REDACTED]. Claimant Exhibit B, 1-26

(9) [REDACTED], in part:

[REDACTED]: Neurological Examination: HISTORY: Gives history of stroke; and residual right sided weakness and speech impairment. Currently smokes 1 pack a day for 25-years; and consuming caffeine. Current medications: aspirin, Prilosec and daily vitamin. HT 5'6", HT 160, BO 130/96.

PHYSICAL EXAMINATION: Mental Status, Cranial Nerves, Head, Neck, Spine, Musculoskeletal Motor, Heart: [All within

normal limits.] Except speech dysfluency and scanning, hypoalgesia to pinprick left hemibody, temperature and vibratory are diminished. Slight drift right upper extremity. Test reviewed showed left parietal infarction of brain and moderate stenosis of carotid artery. [REDACTED]. DE 1, pp. 3-4.

[REDACTED]: Mental Status Examination: Not receiving treatment since [REDACTED]. Takes over the counter medication for pain and Zantac, vitamins, sleeps 8 hours without daytime naps. Has flower garden and does work there planting flowers and weeding. Smoking 1 pack cigarettes a day for 25 years. Prepares own simple meal, gathers wood for her fireplace. Independent in ADLs with good hygiene, neat and clean clothing and gave good positive impression but information was somewhat exaggerated. Ambulates independently but slow. Vision and hearing are fine. Speech has slight problem but can be understood. Very verbal. No bizarre or stereotypical mannerisms displayed. Low energy level but did not appear paralyzed on right side of body. Able to move extremities and did not complain of pain or discomfort.

Based on the results of today's examination; [REDACTED] is able to understand, retain, follow simple and complex instructions. Has ability to work in coordination with others and make simple and complex work-related decisions although she may be slow. Can socialize, respond appropriately to change in environment and not react inappropriately, has ability to seek information for her needs, can travel to unfamiliar places alone via public transportation, likely to decompensate under pressure or challenge. Cognitive functions intact. But she is convinced she is disabled. DIAGNOSIS: Axis I: Somatization disorder. [REDACTED], [REDACTED]. Claimant Exhibit C, 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

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual’s disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairments and the possibility of medical improvement and its relationship to the individual’s ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b) (5).

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.994(b)(5)(i). 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has some physical limitations. Mental limitations have not been established conclusively. [REDACTED] diagnosed somatization disorder with cognitive functions intact. But the physical impairments would impact abilities to perform basic work activities accordingly. The physical impairments have continued since [REDACTED]. 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 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.

The medical records contain a history of cerebrovascular accident (CVA). The Claimant was also diagnosed with hypertension and diabetes. But the Claimant did not see a doctor for any condition since [REDACTED]; and does not take any medications for hypertension or diabetes. 20 CFR 416.930 discusses the effect of the law on failing to follow prescribed treatment.

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.

Based on the medical records available, under Appendix 1 of Subpart P of 20 CFR, Part 404 Listing 1.00, *Musculoskeletal System* is most relevant to the Claimant's physical impairments documented in the medical records, right sided weakness. But the Claimant does not meet this listing because there are no medical records supporting that the Claimant has significant ambulating difficulties/dysfunctions or right sided loss of function. In [REDACTED]

██████████ documents the interview with the Claimant describing planting and weeding in her garden and getting wood for a fireplace; and ambulating.

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 retail at ██████████. ██████████ describes her opinions of the Claimant's abilities at work. See Finding of Fact 9. The doctor opines that the Claimant would be slow, may have speech difficulties and have problems with stress and challenges on the job. This is persuasive the Claimant cannot return to busy, possibly stressful retail sales. 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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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. 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-seven is considered a *younger individual*; a category of individuals age 45-49; Rule 201.21; education: high school graduate or more [REDACTED] reports limited college attendance]; previous work experience: skilled or semi-skilled—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.

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: February 6, 2009

Date Mailed: February 11, 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

cc:

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