

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. 2008-23305
Issue No. 2009, 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
October 13, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400.9; MCL 400.37 upon claimant's request for a hearing. After due notice a telephone hearing was held on October 13, 2008 and claimant was not represented.

ISSUE

Is claimant disabled under the Medical Assistance and State Disability 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) Claimant applied for Medical Assistance and State Disability Assistance on April 10, 2008. Claimant requested Medical Assistance retroactive to January 2008.
- (2) Claimant's impairments have been medically diagnosed as fibromyalgia, coronary artery disease, hyper mobile knees, chronic low back pain, severe obstructive sleep apnea, minimal spinal stenosis at L5 – S (due to degenerative changes) and history of fracture at C6 with sclerotic changes.

(3) Claimant's physical symptoms are constant pain in the hips, thighs, pain in the left knee, frequent back and left foot pain. Muscle spasms in the back, swelling of the hand and feet (mornings) and coughing spells (nightly).

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

(5) Claimant is 48 years of age.

(6) Claimant has a high school education.

(7) Claimant has employment experience as a sales clerk and railroad track maintenance person.

(8) Claimant has some limitations on physical activities involving sitting, standing walking, bending, lifting and stooping.

(9) The department found that claimant was not disabled and denied claimant's application on May 23, 2008

(10) Upon claimant's request for a hearing, medical evidence was submitted to the State Hearing Review Team for consideration. The State Hearing Review Team determined that claimant was not disabled for the programs.

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 400.10, *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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to federal rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent to a listed impairment. Claimant is also unable to do past work. Therefore, the determination of disability will be based on claimant's residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the

national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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. 20 CFR 416.967(a).

Pursuant to 20 CFR 416.920 a five step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have an impairment that must have lasted or must be expected to last for a continuous period of at least 12 months. This is the "durational requirement". 20 CFR 416.909.

The third step in the process is to assess whether the impairment or combination of impairments significantly limits an individual's physical or mental ability to perform basic work

activities. If these abilities are not significantly limited, an individual does not have a severe impairment and is therefore not disabled. 20 CFR 416.920(c).

In the fourth step of the process the social security listing in appendix 1 is used. If the impairment or combination of impairments meet or is the medically equivalent of a listed impairment as set forth in appendix 1. The individual is considered disabled. If not, vocational factors are considered. 20 CFR 416.920(d).

In the fifth step an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, claimant has satisfied requirements as set forth in steps one, two, and three of the sequential evaluation. However, claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore vocational factors will be considered to determine the claimant's residual functional capacity to do relevant work.

In the present case, it appears that claimant has the residual functional capacity to perform work on at least a sedentary level. Claimant has been diagnosed with coronary artery disease. A Persantine Myoview done on February 15, 2007 indicates that claimant has no anginal symptoms, normal ejection fraction and wall motion. There was significant ischemia possible with a small amount of infarction in the anteroseptal segment. Claimant also indicated that she has depression. However, there was no medical evidence presented that establishes this diagnosis. Claimant has been diagnosed with sleep apnea. A report dated April 24, 2008 indicates severe apnea and prescribed a C-PAP machine. At the hearing claimant testified that she uses the machine. She did not describe any symptoms resulting from this condition.

Claimant complains of pain in her back, hips, thighs, left knee, and left foot. Reports of x-rays reveal no evidence of compression fracture, reveal small Schmorl's node of the body of L3 and minimal spinal stenosis due to degenerative changes. There was no herniated disc or neural foraminal stenosis seen. Claimant had a normal x-ray of the left ankle. There was spinal stenosis and degenerative changes at the C5 –C6 level but no herniated disc and minimal left neuroforaminal stenosis at this level.

This Administrative Law Judge does take into account claimant's complaints of pain and limitations; however, the medical evidence, as described above, does not support her claims regarding the frequency or severity of the pain and limitations. At the hearing, claimant testified that although she suffers from pain she takes no medication to alleviate the pain. This would indicate that the pain is not so severe as to result in significant limitations. It should also be noted that claimant testified that she is able to perform such activities as driving and grocery shopping without assistance.

Claimant is a younger individual 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant's previous work was unskilled. Federal Rule 20 CFR 404, subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Using Table I, Rule 201.21 as a guide, claimant is not disabled for the purposes of the Medical Assistance and State disability programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program.

IT IS ORDERED that the Department's decision in this regarded be and is hereby
AFFIRMED.

/s/
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/13/09

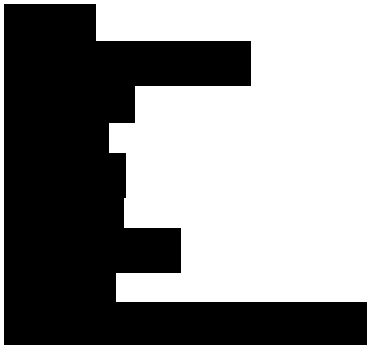
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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 mailing 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.

RC/dj

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