

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. 2008-23488

Issue No. 2009; 4031

Case No: [REDACTED]

Load No. [REDACTED]

Hearing Date:

October 8, 2008

Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 telephone hearing was held on October 8, 2008. The claimant appeared in person at the Department of Human Service (Department).

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of Medicaid (MA) 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 on March 23, 2008 for MA and SDA.
- (2) On May 14, 2008, the Department denied the Claimant's application.
- (3) On June 11, 2008, the Claimant filed a request for hearing regarding the Department's denial of benefits.

- (4) The Claimant is 25 years old.
- (5) The Claimant has a 12th grade education.
- (6) The Claimant has been employed as a cashier and is currently working 10-12 hours a week as a cashier making [REDACTED] and hour.
- (7) The Claimant suffers bipolar, depression.
- (8) The Claimant's limitations have not lasted for 12 months or more.

CONCLUSIONS OF LAW

An administrative hearing was scheduled on the above-mentioned date. During the hearing, this Administrative Law Judge discovered that the Social Security Administration (SSA) had denied the Claimant's application dated April 24, 2008 with an alleged onset date of October 3, 2007. The Claimant failed to appeal this denial. The medical evidence of record does not show any "other" impairments not considered by SSA nor does the record demonstrate objective findings which would show significant worsening of Claimant's condition. Based upon 42 CFR 435.541, SSA has made a final determination. Therefore a final determination has been made on this matter. Per PEM 260, p.2-3, the Claimant's case regarding MA is hereby dismissed.

Administrative Hearings' jurisdiction ends when the Social Security Administration denies the grant of benefits and an appeal of this determination is not made within 60 days. Therefore, this Administrative Law Judge does not retain jurisdiction in this matter and the Claimant's request for a hearing regarding MA is DISMISSED.

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. Other specific financial and non-financial eligibility criteria are found in PEM 261.

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 CFR 416.905

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. 20 CFR 416.920(b). In this case, under the first step, claimant is working but less than substantial gainful employment. Therefore, claimant is not disqualified for SDA at step one in the evaluation process.

Second, in order to be considered disabled for purposes of SDA, 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 data from Doctors to support a finding that claimant has some mental limitations on the Claimant’s ability to perform basic work activities. The claimant’s impairment(s) have lasted a continuous period of ninety days or more. Medical evidence has established that claimant has a severe impairment (or combination of impairments) that has more than a minimal effect on claimant’s 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 (or combination of impairments) 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 a finding that the claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. According to the medical evidence, alone, the claimant cannot be found to be disabled. 20 CFR 416.920(a) (4) (iii). This Administrative Law Judge finds the claimant is not presently disabled at the third step for purposes of the SDA program. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929.

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 will be assessed based on your 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. Residual functional capacity 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.

Here, the medical evidence presented by the claimant regarding her mental conditions fails to support a finding the Claimant would be unable to perform past relevant employment. In fact the Claimant is currently working in an unskilled position as a cashier. The Claimant's

condition would prevent her from being able to work in skilled areas but would not prevent employment in unskilled work such as a cashier.

The undersigned finds the Claimant retains the residual functional capacity to perform a wide range of unskilled work. The Claimant's current and past employment as a cashier is considered unskilled work. Therefore, the Claimant retains the capacity to perform her past relevant work. Therefore SDA is denied per PEM 261 due to the capacity to perform past relevant work.

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 State Disability Assistance program.

It is ORDERED; the department's determination in this matter is UPHELD.

As indicated above, the Claimant's request for MA is hereby DISMISSED.

/s/ _____
Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Service

Date Signed: March 2, 2009

Date Mailed: March 9, 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.

JWO

cc:

