

[REDACTED]

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.: 2008-25465
Issue No.: 2009, 4031
Case No: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 16, 2008
Kalamazoo 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 16, 2008 at the Department of Human Service (Department) in Kalamazoo County. The Claimant and her [REDACTED] s appeared.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application. The 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 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) On May 21, 2008 the Claimant applied for MA-P and SDA.
- (2) On June 25, 2008 the Department denied disability; and on February 10, 2009 the SHRT guided by Vocation Rule 202.13 denied the application because medical records indicated a capacity to perform a wide range of unskilled medium work.
- (3) On July 10, 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 fifty years of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2007 as a child development aid for 15 years.
- (7) Claimant has alleged a medical history of back pain since 1996 with surgery in June 2007 leaving back pain; right/left hip pain and depression/stress.
- (8) June and October 2007, in part:

June: Pre-operative: Significant lumbar stenosis at L5-S1 with bilateral neurogenic claudication with MRI showing moderate to severe stenosis at L5-S1 and degenerative changes; and rest of spinal canal is OK. Admitted for definitive operative repair. [REDACTED]. [REDACTED]. Department Exhibit (DE) 1, p. 47.

October: In June 2007 had lumbar laminectomy and decompression of L5-S1; and pain continued after surgery. But she hasn't been to see [REDACTED]; and she is afraid of PT due to pain with prior treatment with PT. Advised her to see [REDACTED] about PT or pain clinic. On exam: positive central and left lumbar area tenderness to palpation. Mild limitations in both flexion, extension, secondary to pain. Lateral bending to both sides OK. [REDACTED], DE 1, p. 30

(9) November 2008, in part:

X-rays: lumbar spine: height and alignment are satisfactory, moderately advanced spondylosis between L4-S1. Remaining disc spaces are well maintained. There is minimal lower thoracic spondylosis. Mild lower lumbar facet arthrosis. No other abnormalities. [REDACTED]. [REDACTED]. [REDACTED]. DE N, p.12.

November: Medical Evaluation: HISTORY: States has degenerative joint disease and not receiving treatment or physical therapy. Uses a cane. Does range of motion exercises and heat at home which seems to help. States can do household chores, can climb stairs, walk slowly one mile but only lift ten pounds per her doctor. PHYSICAL EXAMINATION: Cooperative answering questions follows commands, immediate, recent, remote memory intact and normal conversation. Good effort during the exam. Vital signs: HT 63-64", WT 175, BP 110/84. Vision acuity right 20/20, left 20/15 without correction. Can hear normal speech. Neck, Chest, Abdomen, Vascular, Musculoskeletal, Neuro: [All within normal limits.] Except: mild difficulty getting on/off exam table and heel/toe walking and squatting and was unable to hop. Mild lumbar spine flexion/extension limits. Motor strength reduced in left lower extremity. Walks with small step without cane. CONCLUSION: Lower back pain likely related to chronic wear and tear working and horseback riding as a child. Some mild weakness left leg but symptoms are myofacial [Mechanical] and there was no active myopathy or neuropathy today. Wears a brace which is not required and uses a cane which is not required.

(10) January 2009, in part:

HISTORY: Had counseling at [REDACTED] in December 2008 for four or so visits. Does laundry down one floor, prepares own meals, continues to drive, does own shopping. OBSERVATIONS: HEARING ADEQUATE, GOOD GROOMING AND HYGIENE. Posture and gait were normal. Eye contact good. Pleasant, cooperative no overt hostility or suspiciousness.

Alert, responsive and spontaneous, appropriate and logical, no evidence of paranoid delusions, grandiose or morbid thinking. Denied long history of anxiety or emotional problems, Affect well modulated with emotions appropriate to thought content. Orientated. Mental Status Examination: [Responses all within normal limits.]

Psychological Testing Results: Results were valid and indicates a mixture of somatic, significant depressive and moderate social difficulties with brief counseling. [REDACTED]
[REDACTED]. DE N, pp. 6-12

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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence to support a finding that Claimant has some mental and physical limitations on her abilities to perform basic work

activities. See finding of facts 8-10. The medical evidence has established that Claimant has a mental and physical impairment that has more than a minimal effect on basic work activities. It is necessary to continue to evaluate the Claimant's impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's mental 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 mental and physical impairments 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. In this matter, the medical records establish lumbar pain and some restriction of movements and depression.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 1.04 *Spinal Disorders*; and Listing 12.04, *Affective Disorders* were reviewed. After reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements. There were no medical records of a longitudinal treatment or diagnosis of depression. [REDACTED] opined all responses were within normal limits on mental status testing. [REDACTED] opined the Claimant's physical complaints were likely extreme and her belief in the medical conditions rendered her ineffective in multiple areas of her life.

The medical records do not report that the Claimant's back impairment is impinging on her spinal cord. In fact, medical records report no compression neuropathy. [REDACTED] did not find myopathy or neuropathy. See finding of fact 9.

The chief complaint of the Claimant was pain. When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his ability to do basic work activities. 20 CFR 416.929(c) (3) The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c) (4) Claimant is physically functional. She drives a car and can meet her own needs at home. The claimant does not need strong analgesics; using OTC medications. There were no limitations placed on her physical activity. By the Claimant's own report to the doctor lifting limit is 10 pounds. But at hearing the testimony was to lifting to 25 pounds.

In this case, this Administrative Law Judge finds the Claimant is not presently 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) prevent 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 child guidance aid. The Claimant testified she cannot return to this type of past relevant work due to the 25 pound lifting limits. The undersigned

accepts this testimony; and decides the Claimant cannot return to past relevant work in child care.

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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*. (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even

for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.13, for approaching advanced age, age 50-54; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.13.

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 disability requirements under SSI disability standards, and prevent other medium employment for ninety days. This Administrative Law Judge finds the Claimant is "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 the State Disability 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: [REDACTED]

Date Mailed: [REDACTED]

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:

