

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

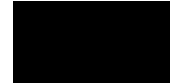


Claimant

Reg. No: 2008-26705

Issue No: 2009

Case No:



Load No:

Hearing Date:

December 17, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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, an in-person hearing was held December 17, 2008. Claimant was not represented.

ISSUE

Is claimant disabled for the purposes of the Medical Assistance 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) Claimant applied for Medical Assistance on June 3, 2008.
- (2) Claimant's impairments have been medically diagnosed as hypertension, asthma, cataracts (both eyes), high cholesterol, chronic obstructive pulmonary disease, skin cancer (on the face), granulomatous disease (abdomen), arteriosclerotic cardiovascular disease, reflux disease, hiatal hernia and gastritis.

(3) Claimant's physical symptoms are constant severe abdominal pain, shoulder pain, shortness of breath, wheezing (at night), partial incontinence of bladder and dizziness.

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

(5) Claimant is 64 years of age.

(6) Claimant has an 11th grade education.

(7) Claimant has employment experience as a laborer and press operator.

(8) Claimant has significant limitations on physical activities involving sitting (no more than an hour at time), standing (no more than 35 minutes at a time), walking (no more than 15 minutes at a time), bending, lifting and stooping.

(9) The department found the claimant was not disabled and denied claimant's application on July 15, 2008. Upon claimant's request for a hearing, medical evidence was submitted to the State Hearing Review Team. The State Hearing Review Team determined that claimant was not disabled for the program.

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).

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).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of 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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

In the present case, the medical evidence indicates that claimant's medical condition would prevent claimant from performing her past relevant work. It appears that claimant has the residual functional capacity to perform work on no more than a light level. Claimant has been diagnosed with hypertension, asthma, cataracts and high cholesterol. She has been diagnosed with chronic obstructive pulmonary disease. Claimant testified to having shortness of breath and wheezing as a result of this condition. She also has been diagnosed with skin cancer. Claimant has an extensive wound on her face as a result of this condition. In an examining report dated [REDACTED] the physician indicated that her skin cancer was invasive in the facial area. Claimant also has a hiatal hernia and gastritis. She complains of constant abdominal pain. She also has been diagnosed with granulomatous disease in her abdomen. As a result of the pain,

claimant indicates she is severely limited in the amount of sitting, standing, walking, bending, lifting and stooping she can perform. The examining physician noted in the report dated June 9, 2008 that claimant would never be able to lift ten pounds or more and could stand and walk for less than two hours within an eight-hour day. He indicated that claimant is extremely weak with severe abdominal pain. He indicated that her condition is deteriorating. In a report dated [REDACTED] the physician noted that claimant's abdomen was distended and tender upon palpitation on right and left upper quadrant. A CT scan of the abdomen indicated that claimant had non-obstructing punctate left nephrolite, granulomatous disease and degenerative changes and vascular calcification. At the hearing, a witness on behalf of claimant testified that claimant has severe shortness of breath and difficulty walking because of that shortness of breath.

Considering the testimony and the medical evidence presented, it appears the claimant has the residual functional capacity to perform work on no more than a light level. Claimant is an individual of retirement age. 20 CFR 416.963. Claimant has a limited education. 20 CFR 416.964. Claimant's previous work has been unskilled or semi-skilled; however, that semi-skilled work is not transferable to light types of jobs. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 2, Rule 202.02, claimant is disabled for the purposes of the Medical Assistance program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the Medical Assistance program as of June 1, 2008. Therefore, the department is ordered to initiate a review of the application of June 3, 2008, if not done previously, to determine claimant's non-medical eligibility. The

department shall inform the claimant of the determination in writing. The case shall be reviewed in January 2010.

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

Date Signed: 03/24/09

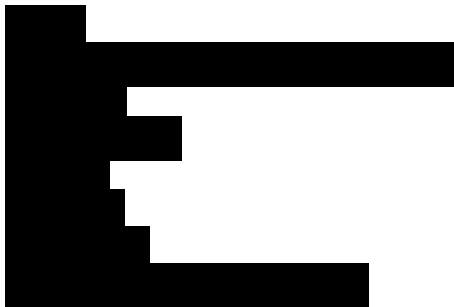
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration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

RPC/db

cc:

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